

THE NORTH CAROLINA MANUAL OF LAW AND FORMS

FOR

JUSTICES OF THE PEACE,
COUNTY OFFICERS,
EXECUTORS AND ADMINISTRATORS,
GUARDIANS,
NOTARIES PUBLIC,
BANKERS,
CORPORATIONS,
BUSINESS MEN AND LAWYERS.

BEING A MANUAL OF THE STATUTORY LAW OF NORTH
CAROLINA (INCLUDING THE LAWS OF 1907)
ANNOTATED WITH MANY
DECISIONS OF THE SUPREME COURT,
AND ACCOMPANIED WITH
CAREFULLY PREPARED FORMS.

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OF THE RALEIGH BAR.

SIXTH EDITION.

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PREFACE.

It is due that I should render grateful acknowledgment for the kind reception accorded the preceding edition of this work. I trust that this edition may fare as well. Its preparation has involved much labor. I shall be gratified if it shall prove of much service to my brethren of the legal profession and to those generally who shall consult its pages.

R. N. SIMMS.

RALEIGH, N. C., November 30, 1907.

INTRODUCTORY.

The publishers appreciate the wide circulation which the fifth edition of this work enjoyed. We believe it is the most widely circulated law book in the State of North Carolina, and it is the constant desire of the author and publishers to make it the most useful. We want to make it absolutely indispensable to the magistrates, county officers and legal practitioners of the State. We gratefully acknowledge the many kind expressions to this effect which we have from time to time received; and we assure our patrons that no effort has been spared to make this the best of all the editions. It has been our wish that we might have issued the book somewhat sooner, but we trust that its excellence will atone for the delay in its publication.

An examination of this sixth edition of THE NORTH CAROLINA MANUAL OF LAW AND FORMS will show that it is a great improvement over all former editions. Since the edition of 1903 was published the laws of North Carolina have been recodified, and "The Revisal of 1905" has taken the place of "The Code." A great many changes were thus made in the statutory law of North Carolina, and these changes, together with the additional number made by the Acts of the General Assembly of 1907, have made a new edition of this work necessary. Not only has the wording of many of the sections been changed, but the arrangement has been entirely altered; and the additions and amendments made by the laws of 1907, when written into the pages of "The Revisal of 1905," make that volume look like a patchwork.

The general arrangement of the book has been changed in several particulars in the effort to place the contents in the most convenient order possible for the use of magistrates, attorneys and court officers generally. An inspection of the table of contents shows the general arrangement. It will be observed that the statutes of most interest to magistrates are

grouped together at the first of the volume and placed in such sequence as to be of easy reference.

The changes in the laws have made necessary a great many changes in the forms appearing in the volume. Every form has been carefully revised and, it is hoped, improved; and a great many new forms have been added.

The index portion of the book has been carefully revised and enlarged.

Because of the necessity of sending a portion of the manuscript to the printer before the entire volume could be compiled, it was found necessary to refer to the sections of the Revisal rather than of the Manual in a number of the notes, but a table of comparative section numbers of the Revisal and this volume has been prepared and will be found at the end of the volume, the use of which makes it easy to at once find in this volume the sections cited by their Revisal numbers. Moreover, the use of this table will be of great assistance in finding in this volume the sections referred to in the decisions of the Supreme Court and there cited by their Revisal numbers.

Justices of the Peace will find herein all of the statutes applicable to their practice and the forms necessary for their use, including the form of marriage ceremony.

Clerks of the Superior Courts will find the forms for which they have daily need.

The fee bill has been carefully revised and conveniently arranged.

Notaries Public will find all of the forms and statutes which they need in the performance of their duties.

Attorneys will find the amendments of the laws worked into the text at their appropriate places, and a wealth of forms to relieve them of much trouble in their practice. We believe this volume is indispensable to young practitioners and a great convenience to all.

Decisions of the Supreme Court will be found annotated throughout the volume where it is thought they will be of service.

Bankers have here a convenient compilation of the laws relating to negotiable instruments and other matters of interest to them.

Corporation officers will find the corporation law of the State in the volume, together with quite a number of forms particularly applicable to their business.

Manufacturers will find herein the laws regulating the employment of children and others as operatives, and the statutes relating to the protection of their property.

County officers will find the chapters relative to their duties full and complete.

Executors, administrators and guardians will find much aid in the performance of their duties by the use of this book.

Business men generally will find this volume to be a manual of the law and forms of the State to which they so frequently have occasion to refer, but which otherwise are more or less difficult of access.

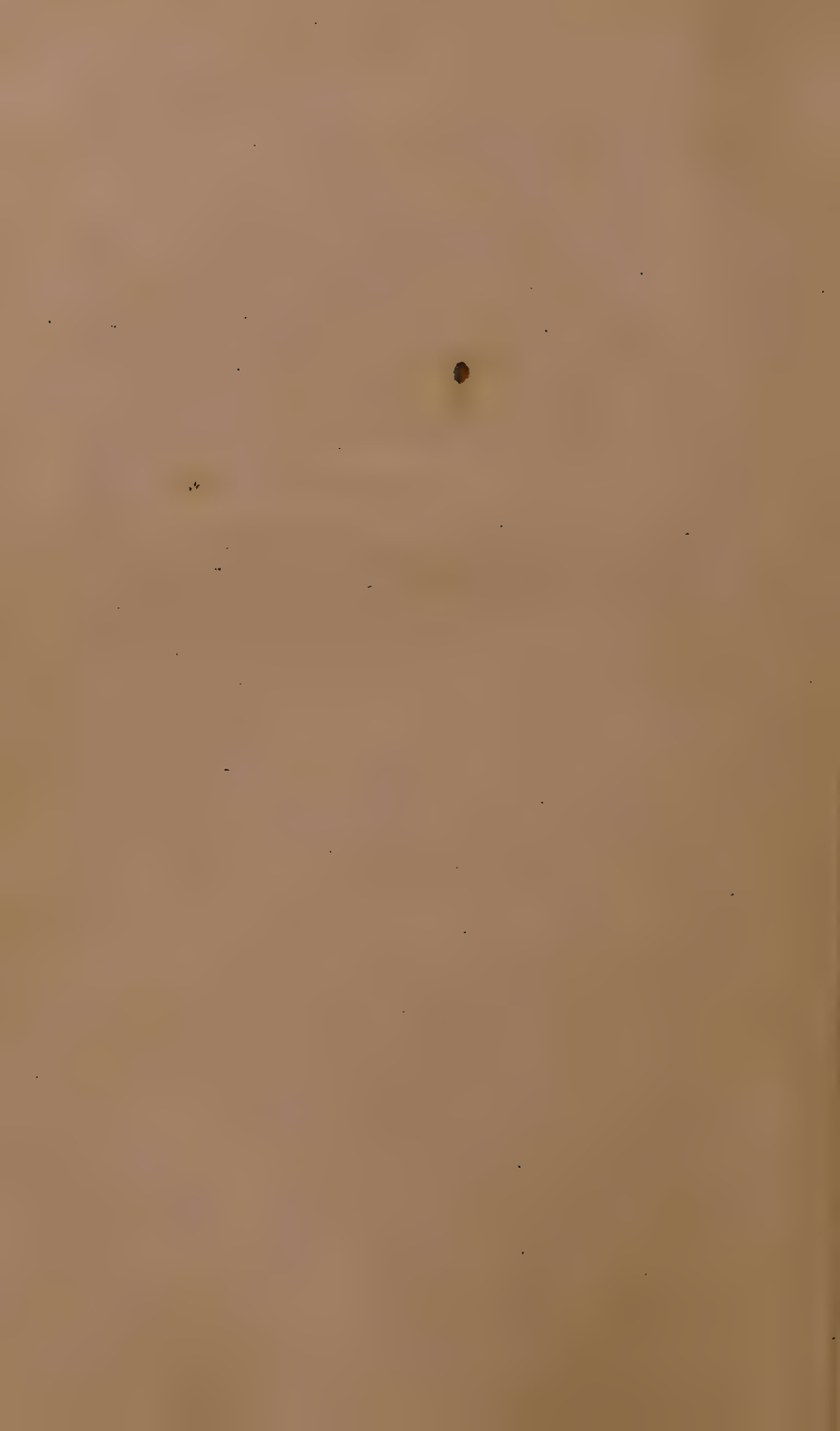


TABLE OF CONTENTS.

PART I.

JUSTICES OF THE PEACE.

	Page.
Chapter 1.—General provisions	1
Chapter 2.—Dockets.....	3
Chapter 3.—Jury trial.....	3
Chapter 4.—Civil jurisdiction	5
Chapter 5.—Rules of procedure before and at trial.....	7
Chapter 6.—Judgment and execution	11
Chapter 7.—Appeal....	14
Chapter 8.—Criminal jurisdiction.....	15

PART II.

CRIMINAL PROCEDURE.

Chapter 1.—General provisions	16
Chapter 2.—Warrants	17
Chapter 3.—Search warrants	18
Chapter 4.—Peace warrants	19
Chapter 5.—Arrest	20
Chapter 6.—Fugitives.....	21
Chapter 7.—Preliminary hearing	23
Chapter 8.—Bail	25
Chapter 9.—Forfeited bail.....	26
Chapter 10.—Commitment.....	29
Chapter 11.—Venue	29
Chapter 12.—Presentment	30
Chapter 13.—Indictment	31
Chapter 14.—Trial before justice.....	34
Chapter 15.—Trial in superior court.....	34
Chapter 16.—Appeal.....	37
Chapter 17.—Execution.....	38

PART III.

CRIMES.

Chapter 1.—General provisions	40
Chapter 2.—Animals	41
Chapter 3.—Banks.....	46
Chapter 4.—Building and loan associations.....	46
Chapter 5.—Burglary.....	47
Chapter 6.—Burnings.....	48

	Page.
Chapter 7.—Chastity.....	49
Chapter 8.—Domestic relations.....	50
Chapter 9.—Drainage.....	54
Chapter 10.—Election.....	56
Chapter 11.—Embezzlement.....	58
Chapter 12.—Fences.....	60
Chapter 13.—Fishing.....	61
Chapter 14.—Forgery.....	61
Chapter 15.—Frauds.....	63
Chapter 16.—Government.....	68
Chapter 17.—Health.....	69
Chapter 18.—Hunting.....	78
Chapter 19.—Insurance.....	83
Chapter 20.—Larceny.....	86
Chapter 21.—Liquors.....	89
Chapter 22.—National guard.....	94
Chapter 23.—Navigation.....	95
Chapter 24.—Officers.....	99
Chapter 25.—Perjury.....	105
Chapter 26.—Person.....	106
Chapter 27.—Professions.....	109
Chapter 28.—Prisoners and convicts.....	111
Chapter 29.—Property.....	112
Chapter 30.—Public justice.....	117
Chapter 31.—Public peace.....	119
Chapter 32.—Public police.....	120
Chapter 33.—Public property.....	128
Chapter 34.—Railroads.....	129
Chapter 35.—Roads and bridges.....	135
Chapter 36.—Revenue.....	138
Chapter 37.—Safety.....	139
Chapter 38.—Sales.....	142
Chapter 39.—Schools.....	148
Chapter 40.—Sunday.....	150
Chapter 41.—Telegraph and telephone.....	151
Chapter 42.—Trademarks.....	151
Chapter 43.—Usury.....	156
Chapter 44.—Watersheds.....	156

PART IV.

CIVIL PROCEDURE.

Chapter 1.—Definitions.....	158
Chapter 2.—General provisions.....	158
Chapter 3.—Limitations—general provisions.....	159
Chapter 4.—Limitations—real property.....	162

	Page.
Chapter 5.—Limitations—other than real property.....	164
Chapter 6.—Parties	166
Chapter 7.—Venue.....	170
Chapter 8.—Summons.....	171
Chapter 9.—Prosecution bonds.....	176
Chapter 10.—Joint and several debtors.....	176
Chapter 11.—Lis pendens	177
Chapter 12.—Complaint	178
Chapter 13.—Defendant's pleadings... ..	179
Chapter 14.—Demurrer.....	180
Chapter 15.—Answer.....	180
Chapter 16.—Reply.....	181
Chapter 17.—Pleading—general provisions.....	182
Chapter 18.—Amendments.....	184
Chapter 19.—Variance between pleading and proof.....	185
Chapter 20.—Reference.....	185
Chapter 21.—Trial.....	187
Chapter 22.—Issues.....	189
Chapter 23.—Verdict.....	190
Chapter 24.—Judgment.....	191
Chapter 25.—Judgment confessed.....	196
Chapter 26.—Appeal.....	197
Chapter 27.—Execution.....	197
Chapter 28.—Execution sales.....	202
Chapter 29.—Betterments.....	204
Chapter 30.—Supplemental proceedings.....	206
Chapter 31.—Property exempt from execution.....	209
Chapter 32.—Special proceedings.	216
Chapter 33.—Arrest and bail	218
Chapter 34.—Attachment	222
Chapter 35.—Claim and delivery	231
Chapter 36.—Injunction	234
Chapter 37.—Receivers	237
Chapter 38.—Mandamus.....	238
Chapter 39.—Quo warranto.....	239
Chapter 40.—Nuisance	239
Chapter 41.—Waste.....	239
Chapter 42.—Compromise.....	240
Chapter 43.—Controversy without action.....	241
Chapter 44.—Examination of parties.....	241
Chapter 45.—Trust funds summarily protected	242
Chapter 46.—Motions and orders	243
Chapter 47.—Notices	243
Chapter 48.—Time.....	244

PART V.

MISCELLANEOUS STATUTES.

	Page.
Chapter 1.—Administration	245
Chapter 2.—Adoption of minor children	269
Chapter 3.—Aliens.....	271
Chapter 4.—Apprentices	271
Chapter 5.—Attorneys at law.....	275
Chapter 6.—Auctioneers	278
Chapter 7.—Bastardy	279
Chapter 8.—Bonds.....	282
Chapter 9.—Boundaries.....	292
Chapter 10.—Burnt and lost records	293
Chapter 11.—Clerks superior court.....	297
Chapter 12.—Commissioners of affidavit.....	306
Chapter 13.—Common law.....	307
Chapter 14.—Constables.....	308
Chapter 15.—Contempt.....	309
Chapter 16.—Conveyances.....	311
Chapter 17.—Coroners	334
Chapter 18.—Corporations.....	336
Chapter 19.—Costs	362
Chapter 20.—County commissioners.....	372
Chapter 21.—County prisons.....	382
Chapter 22.—County revenue.....	390
Chapter 23.—County treasurer.....	393
Chapter 24.—Courts—superior.....	395
Chapter 25.—Descents.....	400
Chapter 26.—Divorce and alimony.....	402
Chapter 27.—Electric companies.....	405
Chapter 28.—Estates.....	407
Chapter 29.—Evidence.....	410
Chapter 30.—Fences and stock law.....	427
Chapter 31.—Gaming contracts.....	432
Chapter 32.—Guardians.....	433
Chapter 33.—Habeas corpus.....	443
Chapter 34.—Health.....	449
Chapter 35.—Hunting.....	455
Chapter 36.—Idiots, inebriates and lunatics.....	464
Chapter 37.—Inn-keepers	480
Chapter 38.—Insolvent debtors	480
Chapter 39.—Interest.....	486
Chapter 40.—Jurors.....	488
Chapter 41.—Landlord and tenant.....	492
Chapter 42.—Libel and slander	498

TABLE OF CONTENTS.

xiii

	Page.
Chapter 43.—Liens	499
Chapter 44.—Liquors	508
Chapter 45.—Marriage	513
Chapter 46.—Married women	516
Chapter 47.—Mills	521
Chapter 48.—Names of persons	525
Chapter 49.—Negotiable instruments	525
Chapter 50.—Notaries	546
Chapter 51.—Oaths	546
Chapter 52.—Officers	554
Chapter 53.—Oysters and fish	555
Chapter 54.—Partition	555
Chapter 55.—Partnership	562
Chapter 56.—Railroads	566
Chapter 57.—Register of deeds	577
Chapter 58.—Religious societies	580
Chapter 59.—Restoration to citizenship	581
Chapter 60.—Roads, bridges, ferries	582
Chapter 61.—Sheriff	593
Chapter 62.—Statutes—construction of	597
Chapter 63.—Strays	599
Chapter 64.—Sunday and holidays	600
Chapter 65.—Surety	600
Chapter 66.—Taxes—collection of	602
Chapter 67.—Towns	603
Chapter 68.—Trademarks	617
Chapter 69.—Warehousemen	621
Chapter 70.—Water supplies	624
Chapter 71.—Weights and measures	627
Chapter 72.—Widows	631
Chapter 73.—Wills	636

PART VI.

FORMS.

Statutory and other Forms	644
---------------------------------	-----

PART VII.

OFFICIAL FEE BILL.

Clerk of superior court	810
Commissioners	812
Constables	813
Coroners	813
County board of education	813
County board of pensions	813

	Page.
County commissioners.....	813
County finance committee	814
County superintendent of public instruction.....	814
County treasurer	814
Election officers.....	815
Entry taker	815
Jailers..	816
Jurors... ..	816
Justices of the peace.....	817
Notaries public	817
Register of deeds	817
Sheriffs	818
Solicitors	820
Standard keeper.....	821
Surveyors and chain-carriers.....	821
Witnesses.....	822
Miscellaneous provisions.....	822

PART VIII.

APPENDIX.

Rules of interest.....	824
Profanity before justice.....	828
Appeals from justice, clerk, and superior court	829

PART IX.

INDEXES.

Index to statutes	853
Index to forms	957

PART I.

JUSTICES OF THE PEACE.

CHAPTER I.

GENERAL PROVISIONS.

Sec. 1. Jurisdiction of justices of the peace.—The several justices of the peace shall have jurisdiction under such regulation as the general assembly shall prescribe, of civil actions founded on contract, wherein the sum demanded shall not exceed two hundred dollars, and wherein the title to real estate shall not be in controversy; and of all criminal matters arising within their counties where the punishment can not exceed a fine of fifty dollars or imprisonment for thirty days. And the general assembly may give the justices of the peace jurisdiction of other civil actions, wherein the value of the property in controversy does not exceed fifty dollars. When an issue of fact may be joined before a justice, on demand of either party thereto, he shall cause a jury of six men to be summoned, who shall try the same. The party against whom judgment shall be rendered in any civil action, may appeal to the superior court from the same. In all cases of a criminal nature, the party against whom judgment is given may appeal to the superior court, where the matter shall be heard anew. In all cases brought before a justice, he shall make a record of the proceedings, and file the same with the clerk of the superior court for his county.—Art. 4, Sec. 27, of State Constitution.

2. Vacancies in office of justices.—When the office of justice of the peace shall become vacant otherwise than by expiration of the term, and in case of a failure by the voters of any district to elect, the clerk of the superior court for the county shall appoint to fill the vacancy for the unexpired term.—Art. 4, Sec. 28, of State Constitution.

3. Constitution, article seven abrogated; exceptions.—All the provisions of article seven of the constitution inconsistent with this chapter, except those contained in sections seven, nine and thirteen, are hereby abrogated, and the provisions of this chapter substituted in their place; subject, however, to the power of the general assembly to alter, amend or abrogate the provisions of this chapter, and to substitute others in their stead, as provided in section fourteen of article seven of the constitution.—Rev., 1408.

4. When and how justices elected.—At every general election held for members of the general assembly, there shall be elected in each township (except those in the counties of Bertie, Caswell, Chowan, Franklin, Forsyth, Granville, Harnett, Montgomery and Vance, in which counties justices of the peace shall be elected by the general assembly), three justices of the peace, and for each township in which any city or incorporated town is situated, one justice of the peace for every one thousand inhabitants in such town or city (except in the city of Wilmington, where the number shall be twenty-five), except that in

the county of Edgecombe there shall be elected one justice of the peace for each and every one hundred duly qualified electors in each township, and for every fraction of one hundred over fifty, who shall hold office for a term of two years from and after the first Monday, in December next after their election.—Rev. 1409; Laws 1907, cc. 225, 293.

Note.—For special provision as to time of election in Washington county, see 1905, c. 148, s. 2.

5. How justices elected in Warren county.—Upon a petition of two-thirds of the qualified electors in any township in Warren county, the board of commissioners of said county shall call an election at the time and in the manner appointed for the election of members of the general assembly in the year one thousand nine hundred and six, and every two years thereafter, for the election of not more than five nor less than three justices of the peace, as the petition shall designate, to be voted for and elected by the voters of the said township in which they reside, and who shall hold office for two years, and until their successors are elected and qualified. The said justices of the peace shall be qualified by taking the oath of office before the clerk of the superior court of said Warren county.—Rev., 1410; 1905, c. 73, s. 2.

6. When justices shall qualify; vacancies.—Every person elected or appointed a justice of the peace, before his term of office begins or within thirty days thereafter, shall take and subscribe the prescribed oath of office before the clerk of the superior court, who shall file the same. All elections of justices of the peace by the general assembly or by the people, shall be void unless the persons so elected shall qualify as herein directed. All original vacancies in the office of justice of the peace occurring before qualification as provided in this section, shall be filled for the term by the governor. All other vacancies shall be filled by the clerk of the superior court.—Rev., 1411.

7. Office forfeited by removal from township.—When any justice of the peace removes out of his township and does not return therein for the space of six months, he thereby forfeits and loses his office.—Rev., 1412.

8. Resignation.—Justices of the peace wishing to resign, must deliver their letters of resignation to the clerk of the superior court, who shall file the same.—Rev., 1413.

9. Punishment on conviction of infamous crimes, etc.—Upon the conviction of any justice of the peace of an infamous crime, or corruption and malpractice in office, he shall be removed from office, and he shall be disqualified from holding or enjoying any office of honor, trust, or profit under this state.—Rev., 1414.

The functions of a justice of the peace are ministerial in preserving the peace, hearing charges against offenders and issuing warrants thereon, examining the parties and bailing and committing them for trial; and in the exercise of such functions, if he act corruptly, oppressively, or from any other bad motive, he is liable to indictment.—State v. Sneed, 84—816.

A justice is not civilly responsible for erroneous bona fide judicial actions within his jurisdiction.—Cunningham v. Dillard, 20 N. C., 351.

A justice of the peace may be indicted for refusing to issue his warrant for the arrest of a felon when the felony was committed in his presence, or a person offers to make affidavit of its commission to him. the felon at the time being in the magistrate's county.—State v. Leigh, 20 N. C., 127.

If one elected to an office takes possession of the same, and engages in the exercise of its duties, and misbehaves by taking unlawful and extortionate fees, he will be liable for such misbehaviour, and may be indicted therefor, notwithstanding the fact that he had failed to take the oath of office.—State v. Cansler, 75—442.

10. Office under the United States.—Any justice of the peace may accept a civil office or appointment of trust or profit, under the authority of the United States, the duties of which confine him to the county where he is a resident.—Rev., 1415.

CHAPTER II.

DOCKETS.

11. Furnished by county commissioners.—A civil and a criminal docket shall be furnished each justice, at the expense of the county, by the board of county commissioners, in which shall be entered a minute of every proceeding had in any action before such justice.—Rev., 1416.

12. Filed with clerks.—Each justice of the peace, as often as he has filled his docket, shall file the same with the clerk of the superior court for his county.—Rev., 1417.

The new constitution requires justices of the peace to keep a record of their proceedings.—Williams v. Bowling, 111—295.

13. Dockets, papers and books delivered to clerk for successor.—When a vacancy exists, from any cause, in the office of a justice of the peace, whose docket is not filled, or when such justice goes out of office by expiration of his term, such former justice, if living, and his personal representative, if dead, shall deliver such docket, all law and other books furnished him as a justice of the peace, and all official papers to the clerk of the superior court for his successor, who is authorized to hear and determine any unfinished action on said docket, in the same manner as if such action had been originally brought before such successor.—Rev., 1418.

CHAPTER III.

JURY TRIAL.

14. Jury list furnished to each justice.—The clerk of the board of commissioners shall furnish, on demand, to each justice of the peace in the county, a list of the jurors for the township for which such justice is elected or appointed.—Rev., 1428.

15. Justice to keep jury box for names of jurors.—Each justice shall keep a jury box, having two divisions, marked respectively number one and number two, and having two locks, the key to be kept by the justice, and shall cause the names of his jury list to be written on small scrolls of paper of equal size, and to be placed in the jury box, in division number one, until drawn out for the trial of an issue as required by law.—Rev., 1429 and 1430.

16. When trial by jury demanded or waived.—A trial by jury must be demanded at the time of joining the issue of fact; and if neither party demand at such time a jury, they shall be deemed to have waived a trial by jury.—Rev., 1431.

17. Deposit of jury fees.—Before a party is entitled to a jury, he shall deposit with the justice the sum of three dollars for jury fees, and the justice shall pay to all persons who attend, pursuant to the summons, as well as to those who do not actually serve, as to those who do serve, twenty-five cents each, to be included in the judgment as part of the costs, in case the party demanding the jury recover judgment, but not otherwise. The justice shall refund to the party the fees of all jurors who do not attend.—Rev., 1432.

18. Jury drawn and trial postponed.—When a trial by jury is demanded, the justice shall immediately, in the presence of the parties, proceed to draw the names of twelve jurors from division marked number one of the jury-box; and the trial of the cause shall thereupon be postponed to a time and place to be fixed by the justice.—Rev., 1433.

19. Summoning the jury.—A list of the jurors drawn shall be immediately delivered by the justice to any constable, or other lawful officer, with an order endorsed thereon, directing him to summon the persons named in the list to appear as jurors at the time and place fixed for the trial; and it is the duty of the officer to proceed forthwith to summon such jurors, or so many of them as can be found, according to the order; and he shall make return thereof at the time and place appointed, stating in his return the names of jurors summoned by him.—Rev., 1434.

20. The jury for the trial of the cause.—At the time and place appointed, and on the return of the order, if the trial be not further adjourned, and if adjourned, then at the time and place to which the trial shall be adjourned, the justice shall proceed, in the presence of the parties, to draw from the jurors summoned the names of six persons to constitute the jury for the trial of the issue.—Rev., 1435.

21. Challenge.—Each party shall be entitled to challenge, peremptorily, two of the persons drawn as jurors.—Rev., 1436.

22. What names to be returned to the jury box, or destroyed.—The scrolls containing the names of jurors not summoned, if any, and of those summoned, but not drawn, and of those drawn, but challenged and set aside, must be returned by the justice to his jury box, in division marked number one: Provided, that the scrolls containing the names of such as are not legally liable or legally qualified to serve as jurors, shall be destroyed.—Rev., 1437.

23. Tales jurors may be summoned.—If a competent and indifferent jury is not obtained from the twelve jurors drawn as before specified, the justice may direct others to be summoned, from the bystanders, sufficient to complete the jury.—Rev., 1438.

24. Not compelled to serve out of township.—No person is compelled to serve as a juror in a justice's court, out of his own township, except as a talisman.—Rev., 1439.

25. Less than six may be a jury, when.—Six jurors shall constitute a jury in a justice's court, but, by consent of both parties, a less number may constitute it.—Rev., 1440.

26. Jurors serving on trial.—The scrolls containing the names of the jurors who serve on the trial of an issue must be placed in the jury-box in division marked number two, until all the scrolls in division marked number one are drawn out. As often as that may happen, the whole number of scrolls shall be returned to division marked number one, to be drawn out as in the first instance.—Rev., 1441.

27. Adjournment after return of the jury.—No adjournment shall be granted after the return of the jury, unless the party asking the same shall, in addition to the other conditions imposed on him by law or by the justice, deposit with the justice, to be immediately paid to the jurors attending, the sum of twenty-five cents each, such amount to be in no case included in the judgment as part of the costs. On such adjournment, the jurors shall attend at the time and place appointed, without further summons or notice; and the fees for the jury, deposited with the justice according to section 1432, shall remain in his hands until the jury are impaneled on the trial, and shall be then immediately paid to the jurors or to the party entitled thereto.—Rev., 1442.

28. Jury sworn and empaneled; verdict.—The jury shall be sworn and empaneled by the justice, who shall record their verdict in his docket and enter a judgment in the case according to such verdict.—Rev., 1443.

CHAPTER IV.

CIVIL JURISDICTION.

29. Actions on contract.—Justices of the peace shall have exclusive original jurisdiction of all civil actions founded on contract, except:

(1) Wherein the sum demanded, exclusive of interest, exceeds two hundred dollars.

(2) Wherein the title to real estate is in controversy.—Rev., 1419.

A creditor whose account consists of several items, either for goods sold or labor done at different times, each of which is for less than \$200, although the aggregate of the account exceeds \$200, may sue before a justice for any number of such items not exceeding \$200. If, however, the debt is an entire one, consisting of but one item, and exceeds \$200, it can not be divided to give the justice jurisdiction.—*Boyle v. Robbins*, 71—130.

Where the entire amount of the plaintiff's debt is more than \$200, which became due by his sale of goods and delivery of same to defendant by distinct installments, he can not split up his account so as to give a justice of the peace jurisdiction, after the whole amount became due. He could, however, have maintained an action upon each delivery as it was made, if the amount was within such jurisdiction.—*McPhail v. Johnson*, 109—571.

A landlord instituted in the court of a justice of the peace two separate actions, each for the recovery of a separate bale of cotton, which he claimed under a contract with his tenant, and which he alleged had been wrongfully converted. This was held not such a "splitting up" of causes of action as would authorize a dismissal of the suits.—*Bell v. Hewerton*, 111—69.

Where an account is made up of several separate transactions it may be "split up" into several accounts so as to bring each in the jurisdiction of a magistrate.—*Caldwell v. Beatty*, 69—365; *Cotton Mills v. Cotton Mills*, 115—475.

But where the dealings were a continuous transaction (here all occurred in one day), and nothing appears in the transaction or on the face of the account rendered to indicate that either party intended that each item should constitute a separate transaction, the account can not be "split up."—*Magruder v. Randolph*, 77—79.

Where there is a single contract for several items, the account can not be "split." And where several payments are due under a single contract, a judgment for one of them will bar action for the others.—*Jarrett v. Self*, 90—478; *McPhail v. Johnson*, 109—571.

The objection to the splitting of an account must be taken in the magistrate's court.—*Blackwell v. Dibbrell*, 103—270.

Where the items of an account have been consolidated, and an account so stated, they can not afterwards be split up.—*Hawkins v. Long*, 74—781; *Marks v. Ballance*, 113—28; *Simpson v. Elwood*, 114—528.

One who gains possession of land as the property of another can not resist an action for the recovery brought after the termination of the lease, by showing a superior title in a third person or in himself, acquired before or after the contract. He must surrender possession to his lessor before he will be allowed to controvert his title.—*Davis v. Davis*, 83—71.

Where the defendant in an action before a justice sets up a counter-claim composed mainly of items subject to legislative scale, and remits the excess over \$200: Held, that the claim when so reduced, is a claim for \$200 in lawful money, not in depreciated paper.—*Derr v. Stubbs*, 83—539.

A justice of the peace has jurisdiction to try an action upon a lost note wherein a sum less than \$200 is demanded, and is competent to exercise the power of requiring in such case the indemnity of the defendant.—*Fisher v. Webb*, 84—44.

An action to recover the penalty under the statute is an action *ex contractu*, and when the sum demanded does not exceed \$200, a justice of the peace has jurisdiction.—*Katzenstien v. R. & G. R. R.*, 84—688.

A counter-claim can not be asserted in a justice's court the amount of which exceeds the jurisdiction of the justice, and the plaintiff can not set up a counter-claim in reply to a counter-claim asserted by the defendant.—*Bozett v. Vaughan*, 85—363.

A defendant sued on a contract in a justice's court may plead in bar of recovery or as a defence an independent cross demand arising *ex contractu*, the principal of which is beyond a justice's jurisdiction.—*McClennahan v. Cotten*, 83—332.

No amendment will be allowed in the superior court after appeal which operates to increase the sum demanded beyond the justice's jurisdiction.—*Meneely v. Craven*, 86—364.

A justice has no jurisdiction of a penal bond, where the penalty is over \$200.—*Morris v. Saunders*, 85—138; *Coggins v. Harrell*, 86—317.

An action against a married woman upon a promise to pay for work done on premises owned and held as her separate estate, is not cognizable in a court of a justice of the peace. Such a court is a common-law court, and its jurisdiction does not therefore embrace causes of an equitable nature.—*Daugherty v. Sprinkle*, 88—300.

A married woman may be sued in the court of a justice of the peace for a debt due by her, or on a contract made by her, before marriage, or for debt contracted by her as a free-trader.—*Neville v. Pope*, 95—346.

A partnership consisting of husband and wife can not be sued in a magistrate's court.—*Patterson v. Gooch*, 108—503.

A justice of the peace has no jurisdiction to enforce contracts of a married woman, unless she is a free-trader.—*Berry v. Henderson*, 102—525.

The summons must show upon its face, if action is on contract, that amount demanded does not exceed \$200. If not on contract, it must specify value of property in controversy, not exceeding \$50.—*Allen v. Jackson*, 86—321.

The "sum demanded" to give justices jurisdiction, means the principal of the debt, exclusive of the interest.—*Hedgecock v. Davis*, 64—650; 82—279; 84—82; 85—138.

When plaintiff in his summons claims only \$200, and recovers less than that sum, it is not necessary to enter a remittur, although the memorandum of indebtedness exhibited in evidence by plaintiff shows a greater sum than \$200 to be due.—*Brantley v. Finch*, 97—91.

In action by the landlord for not more than \$200 rent, magistrate has jurisdiction.—*DeLoatch v. Coman*, 90—186.

Can recover rent less than \$200, although crops are alleged to be worth over \$50.—*Hargrove v. Harris*, 116—418.

Justices' courts possess no equitable jurisdiction.—*Fisher v. Webb*, 84—44.

Mortgagee can not foreclose mortgage in magistrate's court, but can sue there for possession of mortgaged property valued at not exceeding \$50, or may sue there for the mortgage debt, not exceeding \$200.—*Kiser v. Blanton*, 123—400; but see *Norrell v. Mecke*, 127—401.

In a summary proceeding in ejectment, the tenant may set up any equitable defense which he may have, and if such defense involve the title to land, the justice has no jurisdiction thereof.—*Forsythe v. Bullock*, 74—135; also 86—419, and 84—466.

But the question of jurisdiction is not to be determined by matter set up in the answer. The court should hear the evidence as to the issue of tenancy, and if this be found for the landlord, an estoppel operates on the tenant, and the title to land is not drawn into controversy.—*Hahn v. Guilford*, 87—172.

Consent can not give jurisdiction.—*Wardens v. Cope*, 24—44.

Affirmative relief on a counter-claim of less than \$200 can be granted only in a magistrate's court.—*Wiggins v. Guthrie*, 101—661.

Although justices can not affirmatively administer equity, they have jurisdiction of equitable matters set up by way of defense in actions properly cognizable by them.—*Bell v. Howerton*, 111—69.

Actions not on contract.—Justices of the peace shall have concurrent jurisdiction of civil actions not founded on contract, wherein the value of the property in controversy does not exceed fifty dollars.—*Rev.*, 1420.

An action for damages for converting a crop of greater value than fifty dollars is not founded on an implied contract, and hence is not within the cognizance of a justice's court.—*Womble v. Leach*, 83—84; *Montague v. Mial*, 89—137.

30. Justice to dismiss action.—Where it appears in any action brought before a justice, that the principal sum demanded exceeds two hundred dollars, the justice shall dismiss the action and render a judgment against the plaintiff for the costs, unless the plaintiff shall remit the excess of principal above two hundred dollars, with the interest on said excess, and shall, at the time of filing his complaint, direct the justice to make this entry: "The plaintiff, in this action, forgives and remits to the defendant so much of the principal of this claim as is in excess of two hundred dollars, together with the interest on said excess."—*Rev.*, 1421.

31. Where title to real estate is brought in issue.—In every action brought in a court of a justice of the peace, where the title to real estate comes in controversy, the defendant may, either with or without other matter of defence, set forth, in his answer, any matter showing that such title will come in question. Such answer shall be in writing, signed by the defendant or his attorney, and delivered to the justice.—*Rev.*, 1422.

In a proceeding before a justice of the peace under the Landlord and Tenant Act, where the defendant denies the alleged tenancy, it is the duty of the justice to proceed and try the issue of tenancy; if it is determined in favor of the plaintiff, such judgment as he may be entitled to must be given. If it is determined in favor of the defendant, the action must be dismissed.—*Foster v. Penry*, 77—160; approved in *Hahn v. Guilford*, 87—172.

32. Action to be dismissed, when.—If it appears on the trial that the title to real estate is in controversy, the justice shall dismiss the action and render judgment against the plaintiff for costs.—*Rev.*, 1423.

33. Another action may be brought.—When an action before a justice is dismissed upon answer and proof by the defendant that the title to real estate is in controversy in the case, the plaintiff may prosecute an action for the same cause in the superior court, and the defendant shall not be admitted in that court to deny the jurisdiction by an answer contradicting the answer in the justice's court.—*Rev.*, 1424.

34. May issue process and try causes, where.—A justice of the peace may issue a summons or other process anywhere in his county, but he shall not be compelled to try a cause out of the township for which he was elected or appointed.—*Rev.*, 1425.

RULES OF PROCEDURE BEFORE AND AT TRIAL.

CHAPTER V.

RULES OF PROCEDURE BEFORE AND AT TRIAL.

35. Summons.—Civil actions in these courts shall be commenced by the issuing of a summons.—Rev., 1444.

36. Summons, by whom issued.—The summons shall be issued by the justice and signed by him. It shall run in the name of the state, and be directed to any constable or other lawful officer, commanding him to summon the defendant to appear and answer the complaint of the plaintiff at a place, within the county, to be therein specified, and at a time to be therein named, not exceeding thirty days from the date of the summons. It shall also state the sum demanded by the plaintiff or the value of the property sued for, where specific property is claimed.—Rev., 1445.

A summons issued by one justice can not be made returnable before another one, except in cases of bastardy.—*Williams v. Bowling*, 111—295.

37. Service and return of summons.—The officer to whom the summons is delivered shall execute the same within five days after its receipt by him, or immediately if required to do so by the plaintiff. Before proceeding to execute it, he is entitled to require of the plaintiff his fees for the service. When executed, he shall immediately return the summons, with the date and manner of the service, to the justice who issued the same.—Rev., 1446.

38. No process issued by justice outside his own county.—No process shall be issued by any justice of the peace to any county other than his own, unless one or more bona fide defendants shall reside in, and also one or more bona fide defendants shall reside outside of, his county; in which case only he may issue process to any county in which such non-resident defendant resides.—Rev., 1447.

39. Process served on foreign corporation.—Whenever any action of which a justice of the peace has jurisdiction shall be brought against a foreign corporation, which corporation is required to maintain a process agent in the state, the summons may be issued to the sheriff of the county in which such process agent resides, and when certified under the seal of his office by the clerk of the superior court of the county in which the justice issuing such summons resides to be under the hand of such justice, the sheriff of the county to which such summons shall be issued shall serve the same as in other cases and make due return thereof. No justice of the peace shall enter a judgment in such cases against any such foreign corporation unless it shall appear that the process was duly served upon such process agent at least twenty days before the return day of the same. The summons may be made returnable at a time to be therein named, not exceeding forty days from the date of such summons: Provided, this section shall not apply to actions commenced in a county where the defendant has an officer or agent upon whom process may be served.—Rev., 1448; Laws 1907, c. 473.

40. How process issues to another county.—In all civil actions in courts of justices of the peace where one or more of the defendants may reside in a county other than that of the plaintiff, it shall be lawful for any justice of the peace within the county where such defendant or defendants may reside, upon proof of the handwriting of the justice of the peace who issued the process, to indorse his name on the same, or a duplicate thereof, and such process so indorsed shall be executed in like manner as if it had been originally issued by the justice indorsing it.—Rev., 1449.

Since the act of the legislature of March 12, 1877, a justice can not issue a civil process out of his own county against a defendant, unless a defendant in the process also resides in his county.—(See sec. 432, post); *Lilly v. Purcell*, 78—82.

41. Certificate of clerk on process for another county.—In all cases referred to in the preceding section, it shall be lawful for the clerk of the superior court of the county in which the action is brought, to certify, under the seal of his court, on the process or a duplicate thereof, that the justice of the peace who issued the same is an acting justice of the peace in his county. And in all such cases it shall be the duty of any sheriff or constable to whom it may be directed, to make an entry of the date of its reception, and to execute the same as provided for the service of civil process in courts of justices of the peace, and to return it by mail to the justice of the peace from whose court it issued.—Rev., 1450.

42. When judgment entered against defendants in another county.—No justice of the peace shall enter a judgment under the provisions of the two preceding sections against any defendant who may be a non-resident of his county, unless it shall appear that the process was duly served upon him at least ten days before the return day of the same.—Rev., 1451; *Fertilizer Company v. Marshburn*, 122—411.

A summons issued by a justice of the peace against a non-resident corporation need not be served ten days before the trial where served on the secretary of the state corporation commission, the non-resident corporation not having appointed an agent in this state upon whom service could be made.—*Williams v. Building and Loan Association*, 131—267.

43. Attendance of witnesses procured.—The justice, on application of either party, shall, by a subpoena or by an order in writing on the process, direct the constable or other officer to summon witnesses to appear and give testimony at the time and place appointed for the trial. Each witness failing to appear shall forfeit and pay eight dollars to the party at whose instance he was summoned, and shall be further liable to such party for all damage sustained by non-attendance. The fine herein imposed may be recovered, on motion, before the justice who tried the action, unless the witness, on a notice of five days, by affidavit or other proof, show sufficient excuse for his failure to attend.—Rev., 1452.

44. When subpoenas issue to other counties; costs in advance.—Justices of the peace, in all civil cases, may issue subpoenas to counties other than their own; such subpoenas shall be authenticated in the same manner as provided by law for the authentication of process. When so authenticated, the sheriff, constable or other officer to whom the same is directed shall execute and return the same as provided for the return of process: Provided, that where witnesses attend in counties other than their own under such subpoena, they shall receive the same per diem and mileage as witnesses who attend the superior courts: Provided further, that before issuing such subpoenas the party wanting such witnesses shall deposit with the justice before whom the cause is pending one day's per diem and the mileage of said witness to and returning from place of trial, which amount shall be paid to said witness on his attendance and taxed against the party cast in the trial.—Rev., 1453.

45. Subpoena duces tecum in case against railroad.—When any action is brought against a railroad company before a justice of the peace, the justice before whom such action is made returnable shall have power to issue a subpoena to any county within the limits of the state, commanding the president or any officer, director, agent, or any one in the employment of such company, to appear before him at the time and place of trial and to produce such books, cards and other papers as the justice shall deem proper and to give evidence in said cause; and each witness summoned as aforesaid failing or refusing to appear and testify and produce the books and papers aforesaid in obedience to such writ shall be deemed guilty of a contempt of court, and fined not exceeding fifty dollars or imprisoned not exceeding thirty days.—Rev., 1454.

46. Removals, justice dead or incapacitated.—In all proceedings and trials, both criminal and civil, before justices of the peace, the justice before whom the writ of summons is returnable shall, upon affidavit made by either party to the action that he has good reason to believe he is unable to obtain a fair trial before him, move the same to some other justice residing in the same township, or to the justice of some neighboring township if there be no other justice in said township: Provided, that no cause shall be more than once removed: Provided further, that such motion to remove shall be made before evidence is introduced.—Rev., 1455.

Removal beyond township, judgment is void if there are other justices in his own township, *State v. Ivie*, 118—1227.

47. Removals, justice dead or incapacitated.—If any justice of the peace shall die or become incapacitated by removal, resignation or other cause, having any action, civil or criminal, pending before him, which shall not have been finally determined, such action shall not abate or be discontinued, but the plaintiff in such civil action, or any one on behalf of the state in such criminal action, may remove such action for further and final determination before any other justice of the peace of the same township in which the original action was pending, or before any justice of the peace of the same county when there is no other in the township, by filing the papers in said action with the justice to whom the same is removed and by giving ten days' notice to the defendant of such removal; and if the plaintiff in any civil action shall fail to give such notice of removal within ten days from the happening of the death, removal, or resignation, or incapacity of such justice, then the defendant in such action may remove the same by giving like notice to the plaintiff; and if no notice is given by either party to such action within twenty days, then such action shall stand discontinued without prejudice. The justice of the peace before whom such action may be removed shall proceed to try and determine the same, but he shall demand no fees or cost which have theretofore been properly advanced by any party to such action. After such removal either party shall be entitled to all the rights given in the preceding section.—Rev., 1456.

48. Pleadings.—The pleadings in these courts are: 1. The complaint of the plaintiff. 2. The answer of the defendant.—Rev., 1457.

49. Pleadings, oral or written.—The pleadings may be either oral or written; if oral, the substance must be entered by the justice on his docket; if written, they must be filed by the justice, and a reference to them be made on his docket.—Rev., 1458.

50. Complaint.—The complaint must state, in a plain and direct manner, the facts constituting the cause of action.—Rev., 1459.

51. Answer.—The answer may contain a denial of the complaint, or of any part thereof, and also a statement, in a plain and direct manner, of any facts constituting a defense or counter-claim.—Rev., 1460.

52. Demurrer.—Either party may demur to a pleading of his adversary, or to any part thereof, when it is not sufficiently explicit to enable him to understand it, or contains no cause of action or defense, although it be taken as true.—Rev., 1461.

53. When demurrer is sustained.—If the justice deem the objection well founded, he shall order the pleading to be amended on such terms as he may think just; and if the party refuse to amend, the defective pleading shall be disregarded.—Rev., 1462.

54. No particular form for pleadings.—Pleadings are not required to be in any particular form, but must be such as to enable a person of common understanding to know what is meant.—Rev., 1463.

55. No judgment by default.—Where a defendant does not appear and answer, the plaintiff must still prove his case before he can recover.—Rev., 1464.

56. Action on account or note.—In an action or defense, founded on an account or an instrument for the payment of money only, it is sufficient for a party to deliver the account or instrument to the justice and state that there is due him thereon from the adverse party a specified sum, which he claims to recover or set off.—Rev., 1465.

57. Variance between pleading and proof.—A variance between the evidence on the trial and the allegations in a pleading shall be disregarded as immaterial, unless the court is satisfied that the adverse party has been misled to his prejudice thereby.—Rev., 1466.

58. Process not quashed for form.—No process or other proceeding begun before a justice of the peace, whether in a civil or a criminal action, shall be quashed or set aside, for the want of form, if the essential matters are set forth therein; and the court in which any such action shall be pending, shall have power to amend any warrant, process, pleading or proceeding in such action, either in form or substance, for the furtherance of justice, on such terms as shall be deemed just, at any time either before or after judgment.—Rev., 1467.

59. Pleadings amended.—The pleadings may be amended at any time before the trial, or during the trial, or upon appeal, when by such amendment substantial justice will be promoted. If the amendment be made after the joining of the issue, and it appears to the satisfaction of the court, by oath, that an adjournment is necessary to the adverse party, in consequence of such amendment, an adjournment shall be granted. The court may also, in its discretion, require as a condition of an amendment, the payment of costs to the adverse party.—Rev., 1468.

60. Account or demand exhibited.—The justice may, at the joining of issue, require either party, at the request of the other, at that or some other specified time to exhibit his account or demand, or state the nature thereof as far as may be in his power; and in case of his default, the justice shall preclude him from giving evidence of such parts thereof as have not been so exhibited or stated.—Rev., 1469.

61. Proceedings recorded.—The justice shall enter all his proceedings in a cause tried before him in his docket. No part of such proceedings must be entered on the summons, on the pleadings, or on any other paper in the cause.—Rev., 1470.

62. Tender of judgment.—The defendant may, on the return of process and before answering, make an offer in writing to allow judgment to be taken against him for an amount, to be stated in such offer, with costs. The plaintiff shall thereupon, and before any other proceeding be had in the action, determine whether he will accept or reject such offer. If he accept the offer, and give notice thereof in writing, the justice shall file the offer and the acceptance thereof, and render judgment accordingly. If notice of acceptance be not given, and if the plaintiff fail to obtain judgment for a greater amount, exclusive of costs, than has been specified in the offer, he shall not recover costs, but shall pay to the defendant his costs accruing subsequent to the offer.—Rev., 1471.

63. Continuance.—Any justice before whom an action is brought may, on sufficient excuse therefor shown on the affidavit of either party or any person for him, continue such action from time to time for trial; but such continuance shall not exceed thirty days.—Rev., 1472.

64. Chapter on civil procedure applicable to forms, limitations and parties.—The chapter on civil procedure, respecting forms of actions,

parties to actions, the times of commencing actions, and the service of process, shall apply to justice's courts.—Rev., 1473.

65. Chapter on civil procedure applicable to attachment.—The chapter on civil procedure is applicable to proceedings by attachment before justices of the peace, in all cases founded on contract wherein the sum demanded does not exceed two hundred dollars, and where the title to real estate is not in controversy.—Rev., 1474.

66. Chapter on civil procedure applicable to claim and delivery and in arrest and bail.—The chapter on civil procedure is applicable, except as herein otherwise provided, to proceedings in justices' courts concerning claim and delivery of personal property and arrest and bail, substituting the words "justice of the peace" for "judge," "clerk" or "clerks of the court," and inserting the words "or constable" after "sheriff," whenever they occur.—Rev., 1475.

67. Damages to real estate and conversion of personalty, same rules.—All actions in a court of a justice of the peace for the recovery of damages to real estate, or for the conversion of personal property, or any injury thereto, shall be commenced and prosecuted to judgment under the same rules of procedure as provided in civil actions in a justice's court.—Rev., 1476.

68. Suit on judgment, evidence in.—On the trial of an action founded on a former judgment, the judgment itself shall be evidence of the debt, subject to such payments as have been made.—Rev., 1477.

69. When rehearing granted.—When a judgment has been rendered by a justice, in the absence of either party, and when such absence was caused by the sickness, excusable mistake or neglect of the party, such absent party, his agent or attorney, may, within ten days after the date of such judgment, apply for relief to the justice who awarded the same, by affidavit, setting forth the facts, which affidavit must be filed by the justice; whereupon the justice, if he deem the affidavit sufficient, shall open the case for reconsideration; and to this end, he shall issue a summons, directed to a constable, or other lawful officer, to cause the adverse party, together with the witnesses on both sides, to appear before him at a place and at a time, not exceeding twenty days, to be specified in the summons, when the complaint shall be reheard, and the same proceedings had as if the case had never been acted on. If execution has been issued on the judgment, the justice shall direct an order to the officer having such execution in his hands, commanding him to forbear all further proceedings thereon, and to return the same to the justice forthwith.—Rev., 1478.

CHAPTER VI.

JUDGMENT AND EXECUTION.

70. Docketing justice's judgment; lien; stay of execution; Clerk's duty; costs; docketed in other counties.—A justice of the peace, on the demand of a party in whose favor he has rendered a judgment, shall give a transcript thereof, which may be filed and docketed in the office of the superior court clerk of the county where the judgment was rendered. And in such case he shall also deliver to the defendant, or his attorney, a transcript of any stay of execution issued, or which may thereafter be issued, by him on such judgment, which may be in like manner filed and docketed in the office of the clerk of said court. The time of the receipt of the transcript by the clerk shall be noted thereon

and entered on the docket; and from that time the judgment shall be a judgment of the superior court in all respects. The execution thereon shall be issued by the clerk of the superior court to the sheriff of the county, and shall have the same effect, and be executed in the same manner, as other executions of the superior court: Provided, however, that in cases of appeal to the superior court from said judgment so docketed, when judgment is rendered in the superior court on such appeal, the lien acquired by the docketing of such justice's judgment shall merge into the judgment of the superior court, and continue as a lien from the date of the docketing of said justice's judgment, and be superior to any other judgment docketed subsequent to the date of the justice's judgment (prior attachment, liens and judgment on same excepted), and the clerk of the superior court shall carry forward and tax into the judgment of the superior court all costs incurred in the justice's court, including transcript and docketing, as well as all costs incurred in the superior court, and shall issue execution only on the judgment rendered in the superior court, and not upon the justice's judgment. And when judgment is rendered in the superior court, it shall be the duty of the clerk to enter upon the page of the judgment docket where the justice's judgment is docketed as follows: "Judgment in superior court, day of, see judgment docket....., page....." He shall date same and sign it as clerk: Provided further, that when the judgment of the superior court is satisfied, it shall be a satisfaction of the justice's judgment, and the clerk shall so note such satisfaction on the record of the justice's judgment: Provided, that in case a stay of execution upon such judgment shall be granted, as provided herein, executions upon such judgments shall not be issued by the clerk of the superior court until the expiration of such stay. A certified transcript of such judgment may be filed and docketed in the superior court clerk's office of any other county, and with the like effect, in every respect, as in the county where the judgment was rendered, except that it shall be a lien only from the time of filing and docketing such transcript.—Rev., 1479.

A judgment given by a magistrate in one county can not be docketed in another unless previously docketed in the former county.—*McAden v. Banister*, 63—478.

A justice's judgment docketed at 2:30 p. m., has priority over judgments filed and docketed at a later hour of the same day.—*Bates v. Hinsdale*, 65—423.

Under section 435 of The Code, the lien of docketed judgments attaches to after-acquired lands in the same county at the moment the title vests in the judgment debtor.—*Moore v. Jordan*, 117—86.

A justice's judgment not docketed within a year from the date of its rendition is dormant, and its lost vitality can not be restored by docketing the same in the superior court, but only by a new action upon it.—*Cowen v. Withrow*, 111—558.

A motion to vacate a judgment rendered in the court of a justice of the peace, for irregularity, should be made in that court, although it may have been docketed in the superior court. When vacated by the justice, it can be set aside only upon motion in the superior court.—*Whitehurst v. Transportation Co.*, 109—342.

A purchaser under an execution on a judgment of a justice of the peace, docketed after the lapse of a year, acquires no title, although he be a stranger to the judgment and without notice.—*Ibid*.

71. Justice's judgment removed to another county.—Any person who may desire to have a justice's judgment in his favor removed to another county to be enforced against the goods and chattels of the defendant, must obtain from the justice who rendered the judgment a transcript thereof, under his hand; and must further procure a certificate from the clerk of the superior court of the county where the judgment was rendered, under the seal of his court, that the justice who gave the judgment was, at the rendition thereof, a justice of said county. On transcript of the judgment thus certified, any justice in any other county may award execution for the sum therein expressed.—Rev., 1480.

72. Execution, when issued and returnable.—Execution may be issued on a judgment, rendered in a justice's court, at any time within one year after the rendition thereof, and shall be returnable sixty days from the date of the same.—Rev., 1481.

73. Execution, when a lien and on what.—Executions issued by a justice, which must be directed to any constable or other lawful officer of the county, shall be a lien on the goods and chattels of the defendant named therein, from the levy thereof only, but shall not be levied on or enforced in any manner against real estate; but when a justice's judgment shall be made a judgment of the superior court, as is elsewhere provided, the execution shall be capable of being levied and collected out of any property of the defendant in execution, and it shall be a lien on the real estate of said defendant from the time when it becomes a judgment of the superior court.—Rev., 1482; *McGloughan v. Mitchell*, 126—681.

74. Stay of execution granted by justice.—In all actions founded on contract, whereon judgments are rendered in justices' courts, stay of execution, if prayed for at the trial by the defendant or his attorney, shall be granted by the justices in the following manner: For any sum not exceeding twenty-five dollars, one month; any sum above twenty-five dollars and not exceeding fifty dollars, three months; for any sum above fifty dollars and not exceeding one hundred dollars, four months; for any sum above one hundred dollars, six months. But no stay of execution shall be allowed in any action wherein judgment is rendered on a former judgment taken before a justice of the peace.—Rev., 1483.

75. Security on stay of execution.—The party praying for a stay of execution shall, within ten days after the trial, give sufficient security, approved by the justice, for payment of the judgment, with interest thereon till paid, and cost; and the acknowledgment of the surety, entered by the justice in his docket and signed by the surety, shall be sufficient to bind such surety. If the judgment be not discharged at the time to which execution has been stayed, the justice who awarded the judgment shall issue execution against the principal or surety, or both.—Rev., 1484.

One who signs a stay of execution upon a justice's judgment, becomes thereby a party to the judgment, and is bound to the same extent and in like manner as the principal.—*Barringer v. Allison*, 78—79.

76. Execution stayed; undertaking on appeal before clerk.—If an appellant desire a stay of execution of the judgment, he may apply, at any time, to the clerk of the appellate court for leave to give the undertaking, as provided in a subsequent section; who shall, upon the undertaking being given, make an order that all proceedings on the judgment be stayed.—Rev., 1485.

77. Undertaking on appeal before justice.—In all cases of appeal from justices' courts the appellant may give an undertaking for the appeal before the justice who tried the cause, and who shall indorse his approval thereon, instead of before the clerk of the appellate court.—Rev., 1486.

78. Undertaking on appeal; what to contain.—The undertaking shall be in writing, executed by one or more sufficient sureties, to be approved by the justice or clerk making the order, to the effect that if judgment be rendered against the appellant, the sureties will pay the amount together with all costs awarded against the appellant, and when judgment shall be rendered against the appellant, the appellate court shall give judgment against the said sureties.—Rev., 1487.

It is not necessary in order to bind the appellant party to a suit, that he should sign the undertaking.—*Walker v. Williams*, 88—7.

A summary judgment may be given against sureties to an appeal bond for the amount of the judgment and costs awarded against the appellant in appeals from a justice's court, as an additional remedy to a suit on the same as a common law bond.—*Brown v. Brittain*, 84—552.

79. Same, delivery and service of order on whom.—A delivery of a certified copy of the order hereinbefore mentioned to the justice of the

peace, shall stay the issuing of an execution on the judgment; if it has been issued, the services of a certified copy of such order on the officer holding the execution shall stay further proceedings thereon. A certified copy of such order shall also be served on the respondent, or on his agent or attorney, within ten days after the making thereof.—Rev., 1488.

CHAPTER VII.

APPEAL.

80. New trial not allowed; either party may appeal.—A new trial is not allowed in a justice's court in any case whatever; but either party dissatisfied with the judgment in such court may appeal therefrom to the superior court, as hereinafter prescribed.—Rev., 1489.

81. Does not stay execution.—No appeal shall prevent the issuing of an execution on a judgment, or work a stay thereof, except as hereinafter provided.—Rev., 1490.

82. Appeal; when and how taken.—The appellant shall, within ten days after judgment, serve a notice of appeal, stating the grounds upon which the appeal is founded. If the judgment is rendered upon process not personally served, and the defendant did not appear and answer, he shall have fifteen days, after personal notice of the rendition of the judgment, to serve the notice of appeal herein provided for.—Rev., 1491.

One who is made by service of process a party to an action in a justice's court, is bound to take notice of the judgment, and must serve notice of appeal, with a statement of his grounds therefor, within ten days after judgment.—Spaugh v. Boner, 85—208.

The Code of Civil Procedure requires no security for costs on an appeal from a justice's judgment, but security is required to stay execution.—Steadman v. Jones, 65—388.

A recordari is a substitute for an appeal, where the party has lost his right to appeal otherwise than by his own default.—Marsh v. Cohen, 68—283.

Where a party against whom judgment is given in a justice's court loses his appeal by the error of the justice without any default on his part, he is entitled to a recordari.—Ibid.

The superior court shall grant the writ of recordari only upon the petition of the party applying for it, particularly specifying the grounds for the application for the same.—Rule 13 of superior court, 89—611.

Where an appeal is taken from a judgment of a justice of the peace, and security is given to stay execution, the plaintiff is not deprived of the right to have it docketed in the superior court, nor is the lien of the judgment destroyed by the appeal and supersedeas bond.—Dysart v. Brandreth, 118—968.

After a justice of the peace has transmitted an appeal from his judgment, and all the papers, to the superior court, he has no power to grant a motion to set aside his judgment for want of jurisdiction.—Glenn v. Winstead, 116—451.

The notice of appeal from a justice of the peace, when notice is not given on the trial, must be served by an officer.—Clark v. Manufacturing Co., 109—111.

83. Notice in open court sufficient.—Where any party prays an appeal from a judgment rendered in a justice's court and the adverse party is present in person or by attorney at the time of the prayer, the appellant shall not be compelled to give any written notice of appeal, either to the justice or to the adverse party.—Rev., 1492.

84. Justice to make return of within ten days.—The justice shall, within ten days after the service of the notice of appeal on him, make a return to the appellate court and file with the clerk thereof the papers, proceedings and judgment in the case, with the notice of appeal served on him. He may be compelled to make such return by attachment. But no justice shall be bound to make such return until the fees, prescribed by law for his service, be paid him. The fee so paid shall be included in the costs, in case the judgment appealed from is reversed.—Rev., 1493.

Justice granting appeal but afterwards defacing appeal bond and failing to return papers to court, guilty of misdemeanor.—Weaver v. Hamilton, 47—343.

85. Defective return amended.—If the return be defective, the judge or clerk of the appellate court may direct a further or amended return, as often as may be necessary, and may compel a compliance with the order by attachment.—Rev., 1494.

86. Restitution, when ordered.—If the judgment appealed from, or any part thereof, be paid or collected, and the judgment be afterwards reversed, the appellate court shall order the amount paid or collected to be restored, with interest from the time of such payment or collection. The order may be obtained on proof of the facts made at or after the hearing of the appeal, on a previous notice of six days. If the order be obtained before the judgment of reversal is entered, the amount may be included in the judgment.—Rev., 1495.

CHAPTER VIII.

CRIMINAL JURISDICTION.

87. Jurisdiction in criminal actions.—Justices of the peace shall have exclusive original jurisdiction of all assaults, assaults and batteries, and affrays, where no deadly weapon is used and no serious damage is done, and of all criminal matters arising within their counties, where the punishment prescribed by law shall not exceed a fine of \$50, or imprisonment for thirty days: Provided, that justices of the peace shall have no jurisdiction over assaults with intent to kill, or assaults with intent to commit rape, except as committing magistrates: Provided further, that nothing in this section shall prevent the superior or criminal courts from finally hearing and determining such affrays as shall be committed within one mile of the place where and during the time such court is being held; nor shall this section be construed to prevent said courts from assuming jurisdiction of all offences whereof exclusive original jurisdiction is given to justices of the peace, if some justice, within twelve months after the commission of the offence, shall not have proceeded to take official cognizance of the same.—Rev., 1427; *State v. Fesperman*, 108—770.

Where a statute permits a fine of as much as \$10 for each hog permitted to run at large, and the warrant of a justice charges the running at large of ten hogs, the justice has no jurisdiction.—*State v. Wiseman*, 181—795.

PART II.

CRIMINAL PROCEDURE.

CHAPTER I.

GENERAL PROVISIONS.

88. Limitations, indictments for misdemeanor.—All misdemeanors, and petit larceny where the value of the property does not exceed five dollars, except the offenses of perjury, forgery, malicious mischief, and other malicious misdemeanors, deceit, and the offense of being accessory after the fact, now made a misdemeanor, shall be presented or found by the grand jury within two years after the commission of the same and not afterwards: Provided, that in case any of the said misdemeanors, hereby required to be prosecuted within two years, shall have been committed in a secret manner, the same may be prosecuted within two years after the discovery of the offender: Provided further, that if any indictment found within that time shall be defective, so that no judgment can be given thereon, another prosecution may be instituted for the same offense, within one year after the first shall have been abandoned by the state.—Rev., 3147; Laws 1907, c. 408.

89. When criminal process issued and returned.—All process, warrants and precepts, issued by any judge or justice, or clerk of any court, on any criminal prosecution, may issue at any time, and be made returnable to any day of the term of the court to which such warrant, process or precept is returnable.—Rev., 3148.

90. Process, how endorsed.—Every sheriff or other officer shall indorse on all process and subpoenas issuing in criminal cases, whether for the state or defendant, the day when such process and subpoenas came to hand, and also the day of their execution; and on failure of any sheriff or other officer to perform either of said duties he shall forfeit and pay the sum of ten dollars for every case of neglect, to be recovered for the use of the state, in the same manner as forfeitures are recovered against sheriffs by parties in civil suits for failure to make due return of process delivered to them.—Rev., 3149.

91. The accused entitled to counsel.—Every person accused of any crime whatsoever, shall be entitled to counsel in all matters which may be necessary for his defense.—Rev., 3150.

92. Where persons may be imprisoned.—No person shall be imprisoned by any judge, court, justice of the peace, or other peace officer, except in the common jail of the county, unless otherwise provided by law: Provided, that whenever the sheriff of any county shall be imprisoned, he may be imprisoned in the jail of an adjoining county.—Rev., 3151.

93. Who may direct post-mortem examination.—In all cases of homicide, any officer prosecuting for the state may, at any time, direct a post-mortem examination of the deceased by one or more physicians summoned for the purpose, who shall be paid a reasonable compensa-

tion for such examination, to be determined by the court and taxed in the costs, and if not collected out of the defendapt, the same shall be paid by the county.—Rev., 3152.

94. Stolen property returned to owner.—When a person is convicted of robbing or stealing another's property, award of restitution shall be made to the person from whom it was stolen by such order of the court as may be necessary.—Rev., 3153.

95. The magistrate may associate another with him.—Any magistrate to whom any complaint may be made, or before whom any prisoner may be brought, may associate with himself any other magistrate of the same county.—Rev., 3154.

96. Commitments for felonies, when tried or discharged.—When any person who has been committed for treason or felony, plainly and specially expressed in the warrant of commitment, upon his prayer in open court to be brought to his trial, shall not be indicted some time in the next term of the superior or criminal court ensuing such commitment, the judge of the court, upon notice in open court on the last day of the term, shall set at liberty such prisoner upon bail, unless it appear upon oath that the witnesses for the state could not be produced at the same term; and if such prisoner, upon his prayer as aforesaid, shall not be indicted and tried at the second term of the court, he shall be discharged from his imprisonment.—Rev., 3155.

CHAPTER II.

WARRANTS

97. Who may issue.—The chief justice and the associate justices of the supreme court, the judges of the superior court, judges of criminal courts, presiding officers of inferior courts, justices of the peace, mayors of cities or other chief officers of incorporated towns, shall have power to issue the processes and execute the powers of this chapter.—Rev., 3156.

98. Complainant examined on oath.—Whenever complaint shall be made to any such magistrate that a criminal offense has been committed within this state, or without this state and within the United States, and that a person charged therewith is in this state, it shall be the duty of such magistrate to examine on oath the complainant and any witness who may be produced by him; and if it shall appear from such examination that any criminal offense has been committed, he shall issue a proper warrant under his hand, with or without seal, reciting the accusation, and commanding the officer to whom it shall be directed (the justice of the peace or a chief officer of a city or town shall direct his warrant to the sheriff or other lawful officer of his county), forthwith to take the person accused of having committed such offense, and bring him before a magistrate, to be dealt with according to law.—Rev., 3157 and 3158.

A verbal order of a justice of the peace sending a prisoner to jail, whether made before or after the examination on the warrant, is not a sufficient authority for the officer to whom the order is given.—State v. James, 78—455.

A justice of the peace has power to amend any warrant, process, pleading or proceeding in any action pending before him, either civil or criminal, either in form or substance.—Cox v. Grisham, 113—279.

A warrant can not be amended by striking out the offense charged and inserting a new and different offense.—State v. Taylor, 118—1262.

A warrant which charges that the defendant "did unmercifully whip a child, inflicting serious bruises on her person," sets out a battery, though the quo animo is not charged. Should the defense set up that it was inflicted by a teacher on his pupil, it can be invalidated by proof of malice or anger or excessiveness.—State v. Stafford, 113—635.

ⁱ If there be no other justice in the same township to whom a justice of the peace may remove a case (upon the affidavit of removal as allowed by section 1455 of the Revisal of 1905), it may be removed to a justice of some neighboring township. If there is another justice in the same township, and the case is removed to one in another, any judgment rendered by the latter justice is void.—State v. Ivie, 118—1227.

99. Where to run.—Warrants issued by any justice of the supreme court, or by any judge of the superior court, or of a criminal court, may be executed in any part of this state; warrants issued by a justice of the peace, or by the chief officer of any city or incorporated town, may be executed in any part of the county of such justice, or in which such city or town is situated, and on any river, bay or sound forming the boundary between that and some other county, and not elsewhere, unless indorsed as prescribed in the section following.—Rev., 3159.

100. How endorsed; what officer compelled to serve.—If the person against whom any warrant shall be issued by any justice of the peace or chief officer of a city or town shall escape, or be in any other county out of the jurisdiction of such justice or chief officer, it shall be the duty of any justice of the peace or any other magistrate within the county where such offender shall be, or shall be suspected to be, upon proof of the handwriting of the magistrate or chief officer issuing the warrant, to indorse his name on the same, and thereupon the person or officer to whom the warrant was directed may arrest the offender in that county. The justice of the peace or a chief officer of a city or town shall direct his warrant to the sheriff or other lawful officer of his county, and such warrant, when endorsed as herein prescribed, shall authorize and compel the sheriff or other officer of any county in the state in which such endorsement is made to execute the same.—Rev., 3160.

101. Magistrate endorsing, not liable to action.—No magistrate shall be liable to any indictment, action for trespass, or other action, for having indorsed any warrant pursuant to provisions of the last section, although it should afterward appear that such warrant was illegally or improperly issued.—Rev., 3161.

102. Before what magistrate returnable.—Persons arrested under any warrant, where no provision is otherwise made, shall be brought before the magistrate who issued the warrant; or, if he be absent, or from any cause unable to try the case, before the nearest magistrate in the same county; and the warrant, by virtue of which the arrest was made, with a proper return indorsed thereon and signed by the officer or person making the arrest, shall be delivered to such magistrate.—Rev., 3162.

CHAPTER III.

SEARCH WARRANTS.

103. How issued, etc.—If any credible witness shall prove, upon oath, before any justice of the peace, or mayor of any city or chief magistrate of any incorporated town, that there is a reasonable cause to suspect that any person has in his possession, or on his premises, any property stolen, or any false or counterfeit coin, or instrument for counterfeiting such coin; or any false and counterfeit notes, bills or bonds; or any instrument for counterfeiting such note, bill or bond, it shall be lawful for such justice, etc., to grant a warrant, to be executed within the limits of his county or of the county in which such city or incorporated town is situated, to any proper officer, authorizing him to search for said property, and to seize the same, and to arrest the persons having in possession, or on whose premises may be found,

such stolen property, counterfeit coin, notes, bills, or bonds, or the instruments for making the same, and to bring them before any magistrate of competent jurisdiction, to be dealt with according to law.—Rev., 3163.

104. Search warrant, its form and the proceedings thereon.—Such search-warrant shall describe the article to be searched for with reasonable certainty, and by whom the complaint is made, and in whose possession the article to be searched for is supposed to be; it shall be made returnable as other criminal process, and the proceedings thereupon shall be as is required in other cases of criminal complaint.—Rev., 3164.

CHAPTER IV.

PEACE WARRANTS.

105. Who may issue.—The following magistrates shall have power to cause to be kept all the laws made for the preservation of the public peace, and in execution of that power to require persons to give security to keep the peace, in the manner provided in this chapter, namely: The chief justice and associate justices of the supreme court, the judges of the superior and criminal courts, and of any special courts which may be hereafter created, the justices of the peace, the mayors or other chief officers of all cities and towns; and whenever complaint shall be made in writing, and upon oath, to any such magistrate that any person has threatened to commit any offense against the person or property of another, it shall be the duty of such magistrate to examine such complainant and any witness who may be produced, on oath, to reduce such examination to writing, and to cause the same to be subscribed by the parties so examined.—Rev., 3165.

106. When warrant to issue and to whom directed.—If it shall appear from such examination that there is just reason to fear the commission of any such offense by the person complained of, it shall be the duty of the magistrate to issue a warrant under his hand, with or without seal, reciting the complaint, and commanding the officer to whom it is directed forthwith to apprehend the person so complained of, and bring him before such magistrate or some other magistrate authorized to issue such warrant. The warrant shall be directed to the sheriff, coroner or any constable, each of whom shall have power to execute the same within his county; and if no sheriff, coroner or constable can conveniently be found, the warrant may be directed to any person whatever, who shall have power to execute the same within the county within which it is issued. No justice of the peace or mayor, or other chief officer of any city or town, shall direct this warrant to any officer outside of the county of said justice or chief officer.—Rev., 3167 and 3169.

107. Breach of peace in presence of court.—Every person who, in the presence of any magistrate specified in section . . . , or in the presence of any court of record, shall make an affray, or threaten to kill or beat another, or to commit any offense against his person or property; and all persons who, in the presence of such magistrate or court, shall contend with hot and angry words, may be ordered by such magistrate or court, without any other proof, to give such security as above specified, and in case of failure to do so may be committed as above provided.—Rev., 3168.

108. Proceeding on.—Whenever any person complained of on a peace warrant shall be brought before a justice of the peace, such person may be required to enter into a recognizance, payable to the

state of North Carolina, in such sum, not exceeding one thousand dollars, as such justice shall direct, with one or more sufficient sureties, to appear before some justice of the peace within a period not exceeding six months, and not depart the court without leave, and in the meanwhile to keep the peace and be of good behaviour towards all the people of the state, and particularly towards the person requiring such security.—Rev., 3170.

109. When accused discharged.—If the complainant does not appear, the party recognized shall be discharged, unless good cause be shown to the contrary. If the respective parties appear, the court shall hear their allegations and proofs, and may either discharge the recognizance taken, or they may require a new recognizance, as the circumstances of the case may require, for such time as may appear necessary, not exceeding one year.—Rev., 3171.

110. When defendant imprisoned.—If such recognizance shall be given, the party complained of shall be discharged; if such person shall fail to find such security, it shall be the duty of the magistrate to commit him to prison until he shall find the same, specifying in the mittimus the cause of commitment and the sum in which such security was required.—Rev., 3172.

111. Defendant may appeal.—In all proceedings on peace warrants the defendant may appeal from the decision of the justice of the peace to the superior court by giving the bond required by the justice of the peace to keep the peace, in addition to the appeal bond, when the case shall be heard by the judge holding the court in the county.—Rev., 3173.

112.—How discharged after imprisonment.—Any person committed for not finding sureties of the peace as above provided, may be discharged by any magistrate upon giving such security as was originally required of such person, or by a justice of the supreme court, or judge of the superior or criminal court, by giving such other security as may seem sufficient.—Rev., 3174.

113. When and where recognizance returned.—Every recognizance taken pursuant to the foregoing provisions shall be transmitted by the magistrate taking the same to the next term of the superior court for the county in which the offense is charged to have been committed.—Rev., 3175.

CHAPTER V.

ARREST.

114. Who may, for breach of peace, without warrant.—Every person present at any riot, rout, affray or other breach of the peace, shall endeavor to suppress and prevent the same, and, if necessary for that purpose, shall arrest the offenders.—Rev., 3176.

115. Who may, for felony, without warrant.—Every person in whose presence a felony has been committed may arrest the person whom he knows or has reasonable ground to believe to be guilty of such offense, and it shall be the duty of every sheriff, coroner, constable or officer of police, upon information, to assist in such arrest.—Rev., 3177.

116. Officer may, without warrant, when.—Every sheriff, coroner, constable, officer of police, or other officer, entrusted with the care and preservation of the public peace, who shall know or have reasonable ground to believe that any felony has been committed, or that any dangerous wound has been given, and shall have reasonable ground to believe that any particular person is guilty, and shall apprehend that

such person may escape if not immediately arrested, shall arrest him without warrant, and may summon all bystanders to aid in such arrest.—Rev., 3178.

117. Who may break house to prevent a felony.—All persons are authorized to break open and enter a house to prevent a felony about to be committed therein.—Rev., 3179.

118. Officer may break and enter houses.—If a felony or other infamous crime has been committed, or a dangerous wound has been given, and there is reasonable ground to believe that the guilty person is concealed in a house, it shall be lawful for any sheriff, coroner, constable or police officer, admittance having been demanded and denied, to break open the door and enter the house and arrest the person against whom there shall be such ground of belief.—Rev., 3180.

119. Who compelled to assist.—Every person summoned by a judge, justice, mayor, intendent, chief officer of any incorporated town, sheriff, coroner or constable, to aid in suppressing any riot, rout, unlawful assembly, affray or other breach of the peace, or to arrest the persons engaged in the commission of such offenses, or to prevent the commission of any felony or larceny which may be threatened or begun, shall do so.—Rev., 3181.

Note.—For punishment for failure to aid officer in making arrest, see Crimes, s. 656.

120. Procedure on.—Every person arrested without warrant shall be either immediately taken before some magistrate having jurisdiction to issue a warrant in the case, or else committed to the county prison, and, as soon as may be, taken before such magistrate, who, on proper proof, shall issue a warrant and thereon proceed to act as may be required by law.—Rev., 3182.

121. Passenger conductors and depot agents declared special policemen; power and authority.—All passenger conductors of railroad trains and station or depot agents are hereby declared to be special police of the state of North Carolina, with full power and authority to make arrests for offenses committed in their presence or view, or for felony, or on sworn complaint for misdemeanor, except that the conductors shall only have such power on board of their respective trains or their railroad right-of-way, and the agents at their respective stations; and said conductors and agents may cause any person or persons so arrested by them to be detained and delivered to the proper authority for trial as soon as possible. Nothing contained in the provisions of this act shall operate or have the effect to relieve any such railroad company from any civil liability now existing by statute or under the common law for the act or acts of such conductors, station or depot agents, in unlawfully exercising or attempting to exercise the powers herein conferred.—Laws 1907, c. 470.

CHAPTER VI.

FUGITIVES.

122. Felons fleeing from justice, outlawed.—In all cases where any two justices of the peace, or any judge of the supreme, superior or criminal courts, shall, on written affidavit, filed and retained by such justice or judge, receive information that a felony has been committed by any person, and that such person flees from justice, conceals himself and evades arrest and service of the usual process of the law, the said judge, or the said two justices, being justices of the county wherein such person is supposed to lurk or conceal himself, are hereby empow-

ered and required to issue proclamation against him, reciting his name, if known, and thereby requiring him forthwith to surrender himself; and also, when issued by any judge, empowering and requiring the sheriff of any county in the state in which said fugitive shall be, and when issued by two justices, empowering and requiring the sheriff of the county of said justices, to take such power with him as he shall think fit and necessary for the going in search and pursuit of, and effectually apprehending, such fugitive from justice, which proclamation shall be published at the door of the court-house of any county in which such fugitive is supposed to lurk or conceal himself, and at such other places as the judge or justices shall direct; and if any person against whom proclamation hath been thus issued, continue to stay out, lurk and conceal himself, and do not immediately surrender himself, any citizen of the state may capture, arrest and bring him to justice, and in case of flight or resistance by him, after being called on and warned to surrender, may slay him without accusation or impeachment of any crime.—Rev., 3183.

123. From another state, how arrested and held.—Any judge of the supreme, superior or criminal court, or any justice of the peace, or mayor of any city, or chief magistrate of any incorporated town, on satisfactory information that any fugitive or other person in the state has committed, out of the state and within the United States, any offense which, by law of the state in which the offense was committed, is punishable capitally or by imprisonment for one year or upwards in any state prison, shall have authority and is required to issue a warrant for said fugitive or other person, and to commit him to any jail within the state for the space of six months, unless sooner demanded by the public authorities of the state wherein the offense may have been committed, pursuant to the act of congress in that case made and provided. If no demand be made within that time, the said fugitive or other person shall be liberated, unless sufficient cause be shown to the contrary.—Rev., 3184.

No one has authority, without process legally issued in this State, to arrest a person charged with crime in another state and fleeing here for refuge. Such an arrest makes the parties engaged in it guilty of an assault and battery.—*State v. Shelton*, 79—605.

124. Magistrate to keep record; to transmit copy to governor.—Every magistrate committing any person under the preceding section, shall keep a record of the whole proceedings before him, and immediately transmit a copy thereof to the governor for such action as he may deem fit therein.—Rev., 3185.

125.—Duty of the governor.—The governor shall immediately inform the executive officer of the territory where the offence was alleged to have been committed of the proceedings had.—Rev., 3186.

126. Every sheriff or jailer shall surrender fugitive.—Every sheriff or jailer, in whose custody any person so committed shall be, upon the order of the governor, shall surrender him to the person named in such order.—Rev., 3187.

127. Governor may employ agents, and offer rewards for arrest of.—The governor, on information made to him of any person, whether the name of such person be known or unknown, having committed a felony or other infamous crime within the state, and of having fled out of the jurisdiction thereof, or who conceals himself within the state to avoid arrest, or who, having been convicted, has escaped and can not otherwise be apprehended, may either employ a special agent, with a sufficient escort, to pursue and apprehend such fugitive, or issue his proclamation, and therein offer a reward, not exceeding four hundred dollars, according to the nature of the case, as in his opinion may be sufficient for the purpose, to be paid to him who shall apprehend and deliver the fugitive to such person and at such place as in the procla-

mation shall be directed; and he may from time to time issue his warrants on the state treasurer for sufficient sums of money for such purpose.—Rev., 3188.

128. Expenses of bringing from another state, paid.—In all cases where the governor of the state has made a requisition on the governor of another state for any fugitive from justice, and has sent an agent to receive said fugitive, it shall be lawful for the governor to issue a warrant on the state treasurer for the amount of money necessary to pay the expenses of said agent and other costs in the arresting of said fugitive from justice, to be paid by the treasurer of the state.—Rev., 3189.

CHAPTER VII.

PRELIMINARY HEARING.

129. Waiver of examination.—If any person arrested shall desire to waive examination and give bail, it shall be the duty of the officer making the arrest to take him before any magistrate of the county in which the offense is charged to have been committed, or before any judge of the supreme or superior court.—Rev., 3190.

130. Procedure, when justice has not final jurisdiction.—In all cases where a justice of the peace shall not have final jurisdiction of the offense, he shall desist from any final determination of the action or complaint, and proceed as hereinafter provided.—Rev., 3191.

131. Duty of examining magistrate.—The magistrate, before whom any such person shall be brought, shall proceed, as soon as may be, to examine the complainant and the witnesses produced in support of the prosecution, on oath, in the presence of the prisoner, in regard to the offense charged, and in regard to any other matters connected with such charge, which such magistrate may deem pertinent. The defendant shall be allowed a reasonable time before the hearing begins in which to send for and advise with counsel.—Rev., 3192.

132. Testimony reduced to writing; right to counsel.—The evidence given by the several witnesses examined shall be reduced to writing by the magistrate, or under his direction, and shall be signed by the witnesses respectively. If desired by the person arrested, his counsel shall be present during the examination of the complainant and the witnesses on the part of the prosecution, and during the examination of the prisoner; and the prisoner or his counsel shall be allowed to cross-examine the complainant and the witnesses for the prosecution.—Rev., 3193.

133. Prisoner examined; advised of rights. The magistrate shall then proceed to examine the prisoner in relation to the offense charged. Such examination shall not be on oath; and before it is commenced, the prisoner shall be informed by the magistrate of the charge made against him, and that he is at liberty to refuse to answer any question that may be put to him, and that his refusal to answer shall not be used to his prejudice in any stage of the proceedings.—Rev., 3194.

134. Witnesses not to be present at examination of prisoner.—The witnesses produced on the part either of the prisoner or of the prosecution shall not be present at the examination of the prisoner; and while any witness is under examination the magistrate may exclude from the place in which such examination is had all witnesses who have not been examined, and may cause the witnesses to be kept separate and prevented from conversing with each other until they shall have been examined.—Rev., 3195.

135. Answers reduced to writing, read to prisoner, signed by magistrate.—The answers of the prisoner to the several interrogatories shall be reduced to writing by the magistrate, or under his direction. They shall be read to the prisoner, who may correct or add to them; and when made conformable to what he declares is the truth, shall be certified and signed by the magistrate.—Rev., 3196.

136. Witnesses for defendant examined.—After the examination of the prisoner is complete, his witnesses, if he have any, shall be sworn and examined, and he may have the assistance of counsel in such examination.—Rev., 3197.

137. Examination not necessary in misdemeanors.—Nothing contained in the preceding sections shall be construed to require any magistrate, before whom a prisoner charged with a misdemeanor shall be brought, to take the examination of such prisoner, except where such magistrate shall deem it material so to do, or where such examination shall be required by the prisoner.—Rev., 3198.

138. Exclude by-standers in rape trials.—In the trial of cases for rape and of assault with the intention to commit rape, the trial judge may, during the taking of the testimony of the prosecutrix, exclude from the court-room all persons except the officers of the court, the defendant and those engaged in the trial of the case; and upon the preliminary hearing before a justice of the peace of the offenses above named, that officer may adopt a like course.—Laws 1907, c. 21.

139. When prisoner discharged.—If, upon examination of the whole matter, it shall appear to the magistrate either that no offense has been committed by any person or that there is no probable cause for charging the prisoner therewith, he shall discharge such prisoner.—Rev., 3199.

140. In lynching.—Whenever the solicitor of any judicial district shall ascertain that the crime of lynching has been committed in any county in his judicial district, it shall be his duty to go to such county at the earliest possible moment, and at once institute proceedings for the investigation of the crime before the coroner of the county, some judge of the superior court, or justice of the peace, and for the apprehension of the offender. In the performance of this duty he shall cause to be issued subpoenas or other process to compel the attendance of witnesses and examine such witnesses on oath as to their knowledge or information touching the crime being investigated. In all cases where, upon preliminary investigation, it appears probable that any person is guilty of the crime charged, it shall be the duty of the coroner, judge or justice before whom the case is heard to bind such person, with good security, for his appearance at the next ensuing term of the superior or criminal court of some county adjoining the county in which the crime was committed for trial, and in default of bail to commit him to the jail of such adjoining county for safe-keeping, and all necessary witnesses shall be recognized to appear at such term as witnesses for the state.—Rev., 3200.

141. Participants in lynching must testify.—In all investigations before a justice of the peace, coroner, judge, grand jury, or courts and jury, on the trial of the cause, as authorized by the preceding section before a justice of the peace, coroner, judge, grand jury, or courts and jury, on the trial of the cause, as authorized by the preceding section, or under existing law, no person shall be excused from testifying touching his knowledge or information in regard to the offense being investigated, upon the ground that his answer might tend to subject him to prosecution, pains or penalties, or that his evidence might tend to criminate himself, but no discovery made by such witness upon any such examination shall be used against him in any court or in any penal

or criminal prosecution, and he shall, when so examined as a witness for the state, be altogether pardoned of any and all participation in any crime arising under the provisions of the preceding section, or under existing law, concerning which he is required to testify.—Rev., 3201.

142. Prisoner bound over, when.—If it shall appear that an offense has been committed, and that there is probable cause to believe the prisoner to be guilty thereof, if the offense be bailable, and the prisoner offer sufficient bail, such bail shall be taken and the prisoner discharged; if no bail be offered, or the offense be not bailable, the prisoner shall be committed to prison.—Rev., 3202.

143. Witnesses against prisoner recognized.—The magistrate shall bind by recognizances the prosecutor and all the material witnesses against such prisoner to appear and testify at the next term of the court having jurisdiction for the county in which the offense is alleged to have been committed.—Rev., 3203.

144. Witnesses required to give security for appearance.—Whenever such magistrate shall be satisfied by the proof that there is good reason to believe that any such witness will not fulfill the conditions of such recognizance unless security be required, he may order such witness to enter into a recognizance with such sureties as he shall deem meet for his appearance at such court.—Rev., 3204.

148. Examinations and recognizances certified to court.—All examinations and recognizances taken pursuant to the provisions of this chapter shall be certified by the magistrate taking the same to the court at which the witnesses are bound to appear, on the first day of the sitting thereof; and the examinations taken and subscribed as herein prescribed may be used as evidence before the grand jury, and on the trial of the accused, provided he was present at the taking thereof and had an opportunity to hear the same and to cross-examine the deposing witness, if such witness be dead or so ill as not to be able to travel, or by procurement and connivance of the defendant hath removed from the state, or is of unsound mind.—Rev., 3205.

146. Penalty for failing to return.—If any magistrate shall refuse or neglect to return to the proper court any such examination or recognizance by him taken, he may be compelled by rule of court forthwith to return the same, and in case of disobedience of such rule, may be proceeded against by attachment as for contempt of court as provided by law.—Rev., 3206.

CHAPTER VIII.

BAIL.

147. When bail allowed.—If the offense charged in the warrant be not punishable with death, such magistrate may take from the person so arrested a recognizance with sufficient sureties for his appearance at the next term of the court having jurisdiction, to be held in the county where the offense shall be alleged to have been committed.—Rev. 3207.

148. Sheriff or deputy may take; not to become.—When any sheriff or his deputy shall arrest the body of any person, in consequence of the writ of *capias* issued to him by the clerk of a court of record on indictment found, the said sheriff or deputy, if the crime is bailable, shall recognize the offender, and take sufficient bail in the nature of a recognizance for his appearance at the next succeeding court of the county where he ought to answer, which recognizance shall be returned with the *capias*; and the sheriff shall in no case become bail himself.—Rev., 3208.

149. Who may take, before imprisonment.—Officers before whom persons charged with crime, but who have not been committed to prison by any authorized magistrate, shall be brought, shall have power to take bail as follows:

1. Any justice of the supreme court, or a judge of a superior court, in all cases.

2. Any justice of the peace or chief magistrate of any incorporated city or town, in all cases of misdemeanor, and in all cases of felony not capital.—Rev., 3209.

150. Who may take, after imprisonment.—Any justice of the supreme court or any judge of a superior court shall have power to bail persons committed to prison charged with crime in all cases; any justice of the peace or chief magistrate of any incorporated city or town shall have the same power, in all cases where the punishment is not capital.—Rev., 3210.

151. Recognizance to be filed with clerk.—Whenever any prisoner shall be bailed by any officer under the preceding section, such officer shall immediately cause the recognizance taken by him to be filed with the clerk of the superior court of the county to which the prisoner is recognized.—Rev., 3211.

152. Duty of magistrate granting bail.—Any magistrate taking bail shall certify on the warrant the fact of his having let the defendant to bail, and shall deliver the same, together with the recognizance taken by him, to the officer or other person having charge of the prisoner, who shall deliver the same without unnecessary delay to the clerk of the court in which such prisoner shall have been recognized to appear.—Rev., 3212.

153. Bail on continuance before justice.—Upon the continuance of any criminal action returned before any justice of the peace for trial in which the said justice would be authorized to take bail on a finding of probable cause, or in which action he would have final jurisdiction, it shall be the duty of said justice of the peace, and he is hereby authorized and directed, to take such bond, payable to the state of North Carolina, on the same being tendered by the accused, with such security as in his opinion will be sufficient to insure the appearance of the accused before him for trial at the time and place (which shall be mentioned in said bond) set for the trial.—Rev., 3213.

Note.—For mortgage in lieu of personal security, see ss. 266 and 267 of the Revisal.

CHAPTER IX.

FORFEITED BAIL.

154. Proceedings on recognizances to keep the peace.—Every person who shall have entered into a recognizance to keep the peace shall appear according to the obligation thereof; and if he fail to appear, the court shall forfeit his recognizance and order it to be prosecuted, in the manner provided by law, unless reasonable excuse for his default be given.—Rev., 3214.

155. Recognizance, when deemed broken.—No recognizance taken under this chapter shall be deemed to be broken except in the failure of the principal in such recognizance to appear and answer according to the obligation thereof, unless such principal be convicted of some offense amounting in judgment of law to a breach of such recognizance.—Rev., 3215.

156. When recognizance prosecuted.—Whenever evidence of such conviction shall be produced in the court in which the recognizance is

filed, it shall be the duty of such court to order the recognizance to be prosecuted, and the solicitor shall cause the proper proceedings to be thereupon taken.—Rev., 3216.

157. Execution on judgment nisi not to issue before notice.—No execution shall issue upon a forfeited recognizance, or to collect a fine imposed nisi, until a notice has been issued against the person who has forfeited his recognizance or upon whom the fine has been imposed, and his sureties.—Rev., 3217.

158. What notice to contain.—When any recognizance, acknowledged by a principal and sureties, shall be forfeited by two or more of the recognizers, the notice issued thereon shall be jointly against them all, designating which of them are principals and which sureties, and when they are bound in different sums, stating the amount forfeited by each one, and the clerk shall have no greater fee on such notice than is due when it is issued against one defendant.—Rev., 3218.

159. How notices executed.—All notices issuing upon forfeited recognizances shall be executed by leaving a copy with each of the defendants, or at his present place of abode. And in case he can not be found, and has no known place of abode, and the matter be returned, then a notice shall issue, and on the like return the same shall be deemed duly served.—Rev., 3219.

160. Judges may remit forfeited recognizances.—The judges of the superior courts may hear and determine the petition of all persons, who shall conceive they merit relief on their recognizances forfeited; and may lessen, or absolutely remit, the same, and do all and anything therein as they shall deem just and right and consistent with the welfare of the state and the persons praying such relief, as well before as after final judgment entered and execution awarded.—Rev., 3220.

161. Clerk to refund, when.—The clerk of the superior court, on the remission of any forfeited recognizance which has been paid into his office, shall refund the same, or so much thereof as shall be remitted.—Rev., 3221.

162. Treasurer to refund, when.—If the money has been paid to the county treasurer, he shall refund it to the person entitled, on his producing an attested copy of the record from the clerk of the court, certifying that such recognizance hath been remitted or lessened, signed with his own proper name, with the seal of the court affixed thereto.—Rev., 3222.

163. Upon failure to appear before justice, judgment nisi; notice to sureties.—On the failure of the accused to appear at the time and place mentioned in any bond taken by any justice of the peace for a continuance of any cause pending before him, and answer the charge, or, having appeared, shall depart the court without leave thereof first had and obtained, it shall be the duty of said justice of the peace then presiding to enter judgment nisi against the principal and his sureties in said bond for the amount mentioned therein: Provided, the sum does not exceed the sum of two hundred dollars; and immediately issue notice to the principal and the sureties in said bond, giving ten days' time, specifying time and place, to appear and show cause, if any they have, why the said judgment nisi shall not be made final.—Rev., 3223.

164. Judgment final, when rendered.—If the defendant shall fail to appear and show satisfactory reasons for not complying with the provisions of said bond, it shall then be the duty of the justice of the peace to render a final judgment thereon for the amount of the same, and immediately make and transmit to the clerk of the superior court a transcript thereof, which shall be entered upon the judgment docket of said court, and the clerk shall issue execution on said final judgment against the principal and his sureties for the collection of the amount thereof as in other judgments in behalf of the state.—Rev., 3224.

165. When bond exceeds two hundred dollars, procedure.—If the bond aforesaid shall exceed the sum of two hundred dollars, and the accused shall fail to appear as therein provided to answer the charge, or, having appeared, shall depart the court without leave first had and obtained, it shall be the duty of the said justice to have the accused called, and enter upon the bond that the defendant was called and failed to answer, and immediately return the original papers in the case, together with the bond, to the clerk of the court having jurisdiction to try such action, who shall immediately enter the case upon the criminal docket of his court and enter judgment nisi for the amount of the said bond, and issue notice to the accused and his sureties to appear at the next term of said court to show cause why said judgment should not be made final and proceeded in as other cases of forfeited bonds in behalf of the state in said court. The entry on said bond by the justice of the peace shall be prima facie evidence that the principal therein had been called and failed to answer. Nothing in this section shall be so construed as to prevent justices of the peace from remitting the penalty of the bond or the right of appeal from the justice of the peace to the superior court by the defendant or his surety.—Rev., 3225.

166. Bail may arrest and surrender principal; effect on liability.—The bail shall have liberty, at any time before execution awarded against him, to surrender to the court from which the process issued, or to the sheriff having such process to return, during the session, or in the recess of such court, the principal, in discharge of himself; and such bail shall, at any time before such execution awarded, have full power and authority to arrest the body of his principal, and secure him, until he shall have an opportunity to surrender him to the sheriff or court as aforesaid; and the sheriff is hereby required to receive such surrender, and hold the body of the defendant in custody, as if bail had never been given: Provided, that in criminal proceedings, the surrender by the bail, after the recognizance forfeited, shall not have the effect to discharge the bail, but the forfeiture may be remitted in the manner provided for.—Rev., 3226.

167. Person surrendered may give bail; sheriff liable for release.—Any person surrendered in the manner specified in the preceding section, shall have liberty, at any time before final judgment against him, to give bail; and in case of such surrender, the sheriff shall take the bail bond or recognizance to the succeeding court; and in case the sheriff shall release such person without bail, or the bail returned be held insufficient, on exception taken the same term to which such bail bond shall be returned, and allowed by the court, the sheriff, having due notice thereof in criminal cases, shall forfeit to the state the sum of one hundred dollars, to be recovered on motion in like manner as forfeitures for not returning process, and be subject to be indicted for misdemeanor in office; and it shall be the duty of the prosecuting officer to collect the forfeiture; and, in case of a release, the sheriff shall be liable for an escape, and may be prosecuted and punished as provided for in the chapter entitled Crimes.—Rev., 3227.

168. Sheriff may take bail of prisoner in custody.—If any person for want of bail shall be lawfully committed to jail at any time before final judgment, the sheriff, or other officer having him in custody, may take sufficient justified bail and discharge him; and the bail bond shall be regarded, in every respect, as other bail bonds, and shall be returned and sued on in like manner; and the officer taking it shall make special return thereof, with the bond, at the first court which is held after it is taken.—Rev., 3228.

169. May plead any defense principal might.—Every matter which would entitle the principal to be discharged from arrest, may be pleaded by the bail in exoneration of his liability.—Rev., 3229.

CHAPTER X.

COMMITMENT.

170. Must state what.—Every commitment to prison of a person charged with crime shall state:

1. The name of the person charged.
2. The character of the offense with which he is charged.
3. The name and office of the magistrate committing him.
4. The manner in which he may be discharged; if upon giving recognizance or bail, the amount of such recognizance, the condition on the performance of which it shall be discharged, and the persons or magistrate before whom the bail may justify.
5. The court before which the prisoner shall be sent for trial.—Rev., 3230.

171. To what jail.—All persons committed to prison before conviction shall be committed to the jail of the county in which the examination is had, or to that of the county in which the offense is charged to have been committed: Provided, if the jails of these counties are unsafe, or injurious to the health of prisoners, the committing magistrate may commit to the jail of any other convenient county. And every sheriff or jailer to whose jail any person shall be committed by any court or magistrate of competent jurisdiction, shall receive such prisoner and give a receipt for him, and be bound for his safe-keeping as prescribed by law.—Rev., 3231.

172. Of witnesses.—If any witness so required to enter into a recognizance, either with or without sureties, shall refuse to comply with such order, it shall be the duty of such magistrate to commit him to prison until he shall comply with such order, or be otherwise discharged according to law.—Rev., 3232.

CHAPTER XI.

VENUE.

173. Lynching.—The superior court of any county which adjoins the county in which the crime of lynching shall be committed shall have full and complete jurisdiction over the crime and the offender to the same extent as if the crime had been committed in the bounds of such adjoining county; and whenever the solicitor of the district has information of the commission of such a crime, it shall be his duty to furnish such information to the grand juries of all adjoining counties to the one in which the crime was committed from time to time until the offenders are brought to justice.—Rev., 3233.

174. When crime committed on waters dividing counties.—When any offense shall be committed on any water or watercourse, whether at high or low water, which said water or watercourse, or the sides or shores thereof, shall divide counties, such offense may be dealt with, inquired of, tried and determined and punished at the discretion of the court, in either of the two counties which may be nearest to the place where the offense was committed.—Rev., 3234.

175. When assault in one county, death in another.—In all cases of felonious homicide, when the assault shall have been made in one county within the state, and the person assaulted shall die in any other county thereof, the offender shall be indicted and punished for the crime in the county wherein the assault was made.—Rev., 3235.

176. Assault in this state, death in another.—In all cases of felonious homicide, when the assault shall have been made within this state and the person assaulted shall die without the limits thereof, the offender shall be indicted and punished for the crime in the county where the assault was made, in the same manner, to all intents and purposes, as if the person assaulted had died within the limits of this state.—Rev., 3236.

177. Person in this state injuring one in another.—If any person, being in this state, shall unlawfully and wilfully put in motion a force, from the effect of which any person shall be injured while in another state, the person so setting such force in motion shall be guilty of the same offense in this state as he would be if the effect had taken place within this state.—Rev., 3237.

178. Death in this state, immaterial where injury inflicted.—If a mortal wound is given or other violence or injury inflicted, or poison is administered on the high seas or land, either within or without the limits of this state, by means whereof death ensues in any county thereof, said offense may be prosecuted and punished in the county where the death happens.—Rev., 3238.

179. Improper, taken advantage of by plea in abatement; judgment in misdemeanors; trial in felonies.—Because the boundaries of many counties are either undetermined, or unknown, by reason whereof high offenses go unpunished; therefore, for the more effectual prosecution of offenses committed on land near the boundaries of counties, in the prosecution of all offenses it shall be deemed and taken as true that the offense was committed in the county in which by the indictment it is alleged to have taken place, unless the defendant shall deny the same by plea in abatement, the truth whereof shall be duly verified on oath or otherwise both as to substance and fact, wherein shall be set forth the proper county in which the supposed offense, if any, was committed; whereupon the court may, on motion of the state, commit the defendant, who may enter into recognizance, as in other cases, to answer the offense in the county averred by his plea to be the proper county; and, on his prosecution in that county, it shall be deemed, conclusively, to be the proper county. But if the state, upon the plea aforesaid, will join issue, and the matter be found for the defendant, he shall be required to enter into recognizance as in other cases to answer the offense in the county averred by his plea to be the proper county, provided the offense be ballable; and if not ballable, he shall be committed for trial in the county; and, if it be found for the state, the court in all offenses or misdemeanors shall proceed to pronounce judgment against the defendant, as upon conviction; and, in all cases of felony, the defendant shall be at liberty to plead to the indictment, and be tried on his plea of not guilty.—Rev. 3239.

Note.—For venue in larceny and receiving, see Crimes, s. 459. For venue in beating way on trains, see Crimes, s. 707. Exclusive jurisdiction ceded to United States in and over land acquired by United States—Laws 1907, c. 25.

CHAPTER XII.

PRESENTMENT.

180. No person arrested on presentment, nor tried except on indictment.—No person shall be arrested on a presentment of the grand jury, or put on trial before any court, but on indictment found by the grand jury, unless otherwise provided by law.—Rev. 3240.

181. Names of witnesses indorsed on presentment.—When a presentment shall be made of any offense by a grand jury, upon the knowledge of any of their body, or upon the testimony of witnesses, the names of such grand jurors and witnesses shall be indorsed thereon.—Rev., 3241.

CHAPTER XIII.

INDICTMENT.

182. Returned by foreman except in capital cases.—Grand juries shall return all bills of indictment in open court through their acting foreman, except in capital felonies, when it shall be necessary for the entire grand jury, or a majority of them, to return their bills of indictment in open court in a body.—Rev., 3242.

183. Substance of proceedings only set forth in.—In every indictment, information or impeachment in which, by the common law, it may be necessary to set forth at length the judicial proceedings had in any case then or formerly pending in any court, civil or military, or before any justice of the peace, it shall be sufficient to set forth the substance only of said proceedings, or the substance of such part thereof as make, or help to make, the offense prosecuted.—Rev., 3243.

184. Bill of particulars.—In all indictments when further information not required to be set out therein is desirable for the better defense of the accused, the court, upon motion, may, in its discretion, require the solicitor to furnish a bill of particulars of such matters.—Rev., 3244.

185. For homicide.—In indictments for murder and manslaughter, it shall not be necessary to allege matter not required to be proved on the trial; but in the body of the indictment, after naming the person accused, and the county of his residence, the date of the offense, the averment "with force and arms," and the county of the alleged commission of the offense, as is now usual, it shall be sufficient in describing murder to allege that the accused person feloniously, wilfully, and of his malice aforethought, did kill and murder (naming the person killed), and concluding as is now required by law; and it shall be sufficient in describing manslaughter to allege that the accused feloniously and wilfully did kill and slay (naming the person killed), and concluding as aforesaid; and any bill of indictment containing the averments and allegations herein named shall be good and sufficient in law as an indictment for murder or manslaughter, as the case may be.—Rev., 3245.

186. For perjury.—In every indictment for wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offense charged upon the defendant, and by what court, or before whom, the oath was taken (averring such court or person to have competent authority to administer the same), together with the proper averments to falsify the matter wherein the perjury is assigned, without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceedings, either in law or equity, other than aforesaid, and without setting forth the commission or authority of the court or person before whom the perjury was committed.—Rev., 3246.

187. For perjury, form of.—In indictments for perjury the following form shall be sufficient, to-wit:

The jurors for the state, on their oath, present, that A. B. of county, did unlawfully commit perjury upon the trial of an accused felon

.....court, in county, wherein was plaintiff and was defendant, by falsely asserting, on oath (or solemn affirmation) (here set out the statement or statements alleged to be false), knowing the said statement, or statements, to be false, or being ignorant whether or not said statement was true.—Rev., 3247.

188. For subornation of perjury.—In every indictment for subornation of perjury, or for corrupt bargaining or contracting with others to commit wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offense charged upon the defendant, without setting forth the bill, answer, information, indictment, declaration or any part of any record or proceedings, and without setting forth the commission or authority of the court or person before whom the perjury was committed or was agreed or promised to be committed.—Rev., 3248.

189. When greater punishment for second offense, how former conviction stated.—In any indictment for an offense which, on the second conviction thereof, is punished with other or greater punishment than on the first conviction, it shall be sufficient to state that the offender was, at a certain time and place, convicted thereof, without otherwise describing the previous offense; and a transcript of the record of the first conviction, duly certified, shall, upon proof of the identity of the person of the offender, be sufficient evidence of the first conviction.—Rev., 3249.

190. Ownership of property in common; how stated in.—In any indictment wherein it shall be necessary to state the ownership of any property whatsoever, whether real or personal, which shall belong to, or be in the possession of, more than one person, whether such persons be partners in trade, joint tenants or tenants in common, it shall be sufficient to name one of such persons, and to state such property to belong to the person so named and another or others, as the case may be; and whenever, in any such indictment, it shall be necessary to mention, for any purpose whatsoever, any partners, joint tenants or tenants in common, it shall be sufficient to describe them in the manner aforesaid; and this provision shall extend to all joint stock companies and trustees.—Rev., 3250.

191. How money, bank notes, etc., described in.—In every indictment in which it shall be necessary to make any averment as to the larceny of any money, or United States treasury note, or any note of any bank whatsoever, it shall be sufficient to describe such money, or treasury note, or bank note, simply as money, without specifying any particular coin, or treasury note, or bank note; and such allegation, so far as regards the description of the property, shall be sustained by proof of any amount of coin, or treasury note, or bank note, although the particular species of coin, of which such amount was composed, or the particular nature of the treasury note, or bank note, shall not be proven.—Rev., 3251.

192. For embezzlement.—In indictments for embezzlement, except when the offense shall relate to a chattel, it shall be sufficient to allege the embezzlement to be of money, without specifying any particular coin or valuable security; and such allegation, so far as regards the description of the property, shall be sustained if the offender shall be proved to have embezzled any amount, although the particular species of coin or valuable security of which such amount was composed shall not be proved.—Rev., 3252.

193. Intent to defraud; larceny and receiving.—In any case where an intent to defraud is required to constitute the offense of forgery, or any other offense whatever, it shall be sufficient to allege in the indictment an intent to defraud, without naming therein the particular person

or body corporate intended to be defrauded; and on the trial of such indictment, it shall be sufficient, and shall not be deemed a variance, if there appear to be an intent to defraud the United States, or any state, county, city, town, or parish, or body corporate, or any public officer, in his official capacity, or any copartnership or member thereof, or any particular person. The defendant may be charged in the same indictment in several counts with the separate offenses of receiving stolen goods, knowing them to be stolen, and larceny.—Rev., 3253.

194. Not quashed for informality.—Every criminal proceeding by warrant, indictment, information, or impeachment, shall be sufficient in form for all intents and purposes, if it express the charge against the defendant in a plain, intelligible, and explicit manner; and the same shall not be quashed, nor the judgment thereon stayed, by reason of any informality or refinement, if in the bill or proceeding, sufficient matter appears to enable the court to proceed to judgment.—Rev., 3254.

195. Not quashed for non-payment of taxes by juror; nor because juror has suit pending.—No indictment shall be quashed, nor shall judgment thereon be arrested, by reason of the fact that any member of the grand jury finding such bills of indictment had not paid his taxes for the preceding year, or was a party to any suit pending and at issue.—Laws 1907, c. 36.

196. Defects which do not vitiate.—No judgment upon any indictment for felony or misdemeanor, whether after verdict, or by confession, or otherwise, shall be stayed, or reversed, for the want of the averment of any matter unnecessary to be proved, nor for omission of the words "as appears by the record," or of the words "with force and arms," nor for the insertion of the words "against the form of the statutes" instead of the words "against the form of the statute," or vice versa; nor for the omission of the words "against the form of the statute" or "against the form of the statutes," nor for omitting to state the time at which the offense was committed, in any case where time is not of the essence of the offense, nor for stating the time imperfectly, nor for stating the offense to have been committed on a day subsequent to the finding of the indictment, or on an impossible day, or on a day that never happened; nor for want of a proper and perfect venue, when the court shall appear by the indictment to have had jurisdiction of the offense.—Rev., 3255.

197. Waiving bill of indictment not allowed.—The waiving of the finding and return into court of a bill of indictment in any criminal action shall not be allowed in the superior courts of this state except in cases wherein the offense charged is a misdemeanor which does not include or contain the element of fraud, deceit or malice; nor shall such waiver be made in any such action except upon a plea of guilty, or a submission, or a plea of nolo contendere by the defendant in the same. No such waiver in a bill of indictment shall be allowed by the court unless by consent of the defendant's counsel in such action, who shall be one either employed by the defendant to defend him in the action or one appointed by the court to examine into the defendant's case and report as to the same to the court; which service by an attorney so appointed by the court shall be rendered without fee or reward.—Laws 1907, c. 71.

CHAPTER XIV.

TRIAL BEFORE JUSTICE.

198. To hear and determine case, when.—When the justice shall be satisfied that he has jurisdiction, if no jury shall be asked for, he shall proceed to determine the case, and shall either acquit the accused or find him guilty, and sentence him to such punishment as the case may require, not to exceed in any case a fine of fifty dollars, or imprisonment in the county jail for thirty days.—Rev., 3256.

199. Trial by jury, if demanded.—If either the complainant or the accused shall ask for it, the justice shall allow a trial by jury, as is provided in civil actions before justices of the peace.—Rev., 3257.

200. What submitted to jury.—In case a trial by jury shall be had, the justice shall submit to the jury in each case simply the question of the guilt or innocence of the accused of the offense charged, and shall enter the verdict on his docket, and adjudge accordingly.—Rev., 3258.

201. Commitment after judgment.—The commitment to the county prison shall set forth:

1. The name of the guilty person.
2. The nature of the offense of which he is convicted and the date of the trial.
3. The period of his imprisonment.
4. It shall be directed to the sheriff of the county, or to the keeper of the county jail, and shall direct him to keep the prisoner for the time stated, or until discharged by law.
5. The name of the constable or other officer required to execute it.
6. It shall be signed by the justice and be dated.—Rev., 3259.

202. Parties entitled to copy of papers; bar to indictment.—He shall give to either party on request, and on payment of his lawful fee, a copy of the complaint and of his finding and sentence. Such finding and sentence may be pleaded in bar of any indictment subsequently found for the same offense.—Rev., 3260.

203. Justice to make report of all criminal actions of which he has assumed final jurisdiction.—It shall be the duty of each justice of the peace, on or before Monday of every term of the superior court of his county, to furnish the clerk of said court with a list of the names and offenses of all parties tried and finally disposed of by such justice of the peace, together with the papers in each case, in all criminal actions, since the last term of the superior court. The clerk of the court shall hand a copy of such list to the solicitor and to the grand jury at each term of court; and no indictment shall be found against any party whose case has been so finally disposed of by any justice of the peace: Provided, that this section shall not be deemed to extend or enlarge or otherwise affect the jurisdiction of justices of the peace, except as provided by law.—Rev., 3261.

CHAPTER XV.

TRIAL IN SUPERIOR COURT.

204. Prisoner mute, plea "not guilty" entered.—If any person being arraigned upon or charged in any indictment for any crime, shall stand mute of malice or will not answer directly to the indictment, the court shall order the plea of "not guilty" to be entered on behalf of such person; and the plea so entered shall have the same force and effect as if such person had pleaded the same.—Rev., 3262.

205. Peremptory challenges by defendant; judge decides competency.

—Every person on joint or several trial for his life may make a peremptory challenge of twenty-three jurors and no more; and in all joint or several trials for crimes and misdemeanors, other than capital, every person on trial shall have the right of challenging peremptorily and without showing cause, four jurors and no more. And to enable defendants to exercise this right, the clerk in all such trials shall read over the names of the jurors on the panel, in the presence and hearing of the defendants and their counsel before the jury shall be impaneled to try the issue; and the judge or other presiding officer of the court shall decide all questions as to the competency of jurors.—Rev., 3263.

206. Peremptory challenges by state.—In all capital cases, the prosecuting officer on behalf of the state shall have the right of challenging peremptorily four jurors for each defendant. Said challenge must be made before the juror is tendered to the prisoner; and if he challenge more than four jurors he shall assign for his challenge a cause certain; and in all other cases of a criminal nature, a challenge of two jurors shall be allowed in behalf of the state, for each defendant, and challenges also for a cause certain, and in all cases of challenge for cause certain the same shall be inquired of according to the custom of the court.—Rev., 3264; Laws 1907, c. 415.

207. Jurors on special venire subject to challenge as tales jurors.

—In the trial of all criminal cases, where a special venire shall be ordered, the same causes of challenge to the jurors summoned on the special venire shall be allowed as exist to tales jurors.—Rev., 3265.

208. May exclude by-standers in trial of rape cases.—See section 138 infra.

209. Term expiring during trial, court continued; civil actions.

—In case the term of a court shall expire while a trial for felony shall be in progress, and before judgment shall be given therein, the judge shall continue the term as long as in his opinion it shall be necessary for the purposes of the case; and he may in his discretion exercise the same power in the trial of any other cause under the same circumstances, except civil actions begun after Thursday of the last week.—Rev., 3266.

210. Libel, defense to.—Every defendant who shall be charged by indictment with the publication of a libel, may prove on the trial for the same the truth of the facts alleged in the indictment; and if it shall appear to the satisfaction of the jury that the facts are true, the defendant shall be acquitted of the charge.—Rev., 3267.

211. Defendant convicted of assault; when included in charge.

—On the trial of any person for rape, or any felony whatsoever, when the crime charged shall include an assault against the person, it shall be lawful for the jury to acquit of the felony and to find a verdict of guilty of assault against the person indicted, if the evidence shall warrant such finding; and when such verdict shall be found the court shall have power to imprison the person so found guilty of an assault, for any term now allowed by law in cases of conviction when the indictment was originally for the assault of a like character.—Rev., 3268.

212. Conviction may be for a less degree or an attempt.—Upon the trial of an indictment the prisoner may be convicted of the crime charged therein or of a less degree of the same crime, or of an attempt to commit the crime so charged, or of an attempt to commit a less degree of the same crime.—Rev., 3269.

213. Burglary in first degree charged, verdict may be for second.

—When the crime charged in the bill of indictment is burglary in the first degree, the jury may render a verdict of guilty of burglary in the second degree, if they deem it proper so to do.—Rev., 3270.

214. Verdict for murder in the second degree on bill for first.—Nothing contained in the statute law dividing murder into degrees shall be construed to require any alteration or modification of the existing form of indictment for murder, but the jury before whom the offender is tried shall determine in their verdict whether the crime is murder in the first or second degree.—Rev., 3271.

215. New trial to defendant.—The courts may grant new trials in criminal cases when the defendant is found guilty, under the same rules and regulations as in civil cases.—Rev., 3272.

216. Nol. pros. after two terms; when *capias* and subpoenas to issue.—A *nolle prosequi* “with leave” shall be entered in all criminal actions in which the indictment has been pending for two terms of court and the defendant has not been apprehended and in which a *nolle prosequi* has not been entered, unless the judge for good cause shown shall order otherwise. The clerk of the superior court shall issue a *capias* for the arrest of any defendant named in any criminal action in which a *nolle prosequi* has been entered when he has reasonable ground for believing that such defendant may be arrested, or upon the application of the solicitor of the district. When any defendant shall be arrested it shall be the duty of the clerk to issue a subpoena for the witnesses for the state endorsed on the indictment.—Rev., 3273.

216a. Youthful offenders sent to houses of correction.—Offenses by any minor under the age of sixteen years, where the punishment as now fixed by law can not exceed a term of ten years, shall be misdemeanors and punished as hereinafter provided, or in the manner now prescribed by law, in the discretion of the presiding judge.

Whenever any county or counties in this state shall establish a house of correction under chapter thirty-four of the Revisal, or under any special act, all persons under the age of sixteen years convicted of misdemeanors may, in the discretion of the court, be sentenced to such house of correction from any county in which one may be established, and from any other county when arrangements shall have been made with the county or counties which have established such house of correction for the care and custody of such youthful offenders; and in sentencing any such person the judge may fix a minimum and maximum term, the minimum term to be fixed in the discretion of the court and the maximum term not greater than ten years; and at any time after the expiration of the minimum term the trustees or authorities in charge of such offenders may let out on parole any one sentenced to such house of correction or other place of confinement upon such terms as may be deemed wise and just, that parole not to extend beyond the time of the maximum term.

Where there is no house of correction, or in cases where a person convicted of a misdemeanor can not be conveniently sentenced to a house of correction, the judge before whom such person is convicted may order him to be taken in charge and custody by the county commissioners of the county, and in such case the county farm may be treated as a house of correction, and the term fixed in the same manner as is provided for those sentenced to houses of correction, with the same power as to parole, and in such case unruly prisoners may be confined in the county jail when not employed.

Whenever there shall be in this state a reformatory, whether it be a private one or one established by act of the legislature, the judge before whom a youth under the age of sixteen years is convicted of a misdemeanor may, within his discretion, sentence such person to such reformatory in the same manner as if it were a house of correction, and the persons in charge of such reformatory shall have the same power to let out any such youthful offender as if it were a house of correction.

Instead of sentencing any such offender as herein provided for, the Judge before whom such offender may be convicted may order such

offender to be apprenticed to some suitable person upon reasonable terms, so modified regarding the law as to apprentices as the judge may deem proper, but in no case shall the master be exempt from providing for such apprentice such instruction as will enable him to read and write, nor shall the term exceed the time when such person shall arrive at twenty-one years of age: Provided, his term does not exceed the time when he arrives at twenty-one years.

Whenever any one provided for under this act has been let out on parole, the trustee of any house of correction or the county commissioners or the persons in charge of the reformatory may, upon the failure of such person to comply with the terms of parole, apply to the clerk of the superior court of the county in which said person was convicted, and have a *capias* issued to any sheriff in the state for the arrest and delivery of any such offender to the parties who had previously paroled said offender. And for said arrest and delivery said sheriff shall be paid actual expenses and the cost of the *capias* by the county in which said offender was indicted.—Laws 1907, c. 1011.

CHAPTER XVI.

APPEAL.

217. Defendant may appeal; trial de novo.—The accused may appeal from the sentence of the justice to the superior court of the county. On such appeal being prayed, the justice shall recognize both the prosecutor and the accused, and all the material witnesses, to appear at the next term of the court, in such sums as he shall think proper; and he may require the accused to give sureties for his appearance as aforesaid. In all cases of appeal, the trial shall be anew, without prejudice from the former proceedings.—Rev., 3274.

218. Papers sent to appellate court; return what to contain.—In every case in which an appeal shall be prayed the justice shall forthwith transmit to the clerk of the superior court of the county all papers in the case, together with a copy of the verdict, if any, of his determination of the facts if there shall have been no trial by jury, and of the sentence, in which shall be set forth all the facts found by him, as well as his finding of those which were alleged in the complaint, and which were found by him not to be proved.—Rev., 3275.

219. When state may appeal.—An appeal to the supreme court may be taken by the state in the following cases, and no other. Where judgment has been given for the defendant—

1. Upon a special verdict.
2. Upon a demurrer.
3. Upon a motion to quash.
4. Upon arrest of judgment.—Rev., 3276.

220. When defendant may appeal.—In all cases of conviction in the superior court for any criminal offense, the defendant shall have the right to appeal, on giving adequate security to abide the sentence, judgment or decree of the supreme court; and the appeal shall be perfected and the case for the supreme court settled as provided in civil actions.—Rev., 3277.

221. Defendant may appeal without security for costs.—In all such cases of conviction in the said courts, the defendant shall have the right to appeal without giving security for costs, upon filing affidavit that he is wholly unable to give security for the costs, and is advised by counsel that he has reasonable cause for the appeal prayed, and that the application is in good faith.—Rev., 3278.

222. Appeal granted, bail allowed defendant.—It shall be the duty of the judge on filing the affidavit required in the preceding section, to grant the appeal without security for costs; and for any bailable offense shall require the defendant to enter into recognizance in a reasonable sum to make his appearance at the first term of the superior court to be held in the county and to further answer the charge preferred.—Rev., 3279.

223. Bail pending appeal.—When any person convicted of a misdemeanor, and sentenced by the court, shall appeal, the court shall allow such person to give bail pending appeal.—Rev., 3280.

224. Appeal not to vacate judgment; stays execution.—In criminal cases an appeal to the supreme court shall not have the effect of vacating the judgment appealed from, but upon perfecting the appeal as now required by law, either by giving bond or in forma pauperis, there shall be a stay of execution during the pendency of the appeal.—Rev., 3281.

225. Judgment for fines docketed; lien as other judgments; execution issued.—When the sentence in whole or in part directs the payment of a fine, the judgment shall be docketed by the clerk and be a lien on the real estate of the defendant in the same manner as judgments in civil actions, and executions thereon shall only be stayed, upon an appeal taken, by security being given in like manner as is required in civil cases. Should the judgment be affirmed, upon appeal to the supreme court, the clerk of the superior court, on receipt of the certificate from the supreme court, shall issue execution on such judgment.—Rev., 3282.

226. Upon receipt of certificate of opinion of supreme court, what to be done.—The clerk of the superior court, in all cases where the judgment has been affirmed (except where the conviction is a capital felony), shall forthwith on receipt of the certificate of the opinion of the supreme court notify the sheriff, who shall proceed to execute the sentence which was appealed from. In criminal cases where the judgment is not affirmed the cases shall be placed upon the docket for trial at the first ensuing term of the court after the receipt of such certificate.—Rev., 3283.

CHAPTER XVII.

EXECUTION.

227. Governor to issue warrant for execution of death penalty.—In all cases of affirmance of a sentence for a capital felony, the clerk of the supreme court, at the same time that the decision of the supreme court is certified down to the superior court, shall send a duplicate thereof to the governor, who shall immediately issue his warrant under the great seal of the state to the sheriff of the county in which the appellant was sentenced, directing him to execute the death penalty on a day specified in said warrant, not less than thirty days from the date of said warrant; but this shall not deprive the governor of the power to pardon or reprieve the defendant or to commute the sentence.—Rev., 3284.

228. Capital executions private.—As the ends of justice, public morals and the preservation of order demand that the execution of all capital offenders should be made private and invested with the solemnity appropriate to the final act of penal law, any sheriff on whom shall devolve the execution of a sentence of death on a public offender shall be required to provide for the execution of such criminal within

the jail-yard inclosure, and as much removed from public view as the means within his control will allow.—Rev., 3285.

229. Witnesses and necessary assistants to be present at execution.—The sheriff, after having provided for the private execution of the criminal, may admit by ticket, in addition to the required guard, two physicians and necessary assistants, not more than thirty-six nor less than eighteen respectable citizens, to witness for the state the due observance of the law. The board of commissioners of Cumberland county shall have the power, in their discretion, to prescribe the place within said county for the execution of criminals in capital cases: Provided, that no such execution shall be public.—Rev., 3286.

Note.—For incendiary fires, procedure for investigation, see Insurance. For procedure in mayor's court, see Towns and Cities. For outlawing by justices, see s. 122. When defendant imprisoned for non-payment of fines and costs, see Costs, s. 1292 of the Revisal.

PART III.

CRIMES.

CHAPTER I.

GENERAL PROVISIONS.

230. Accessories to felonies before the fact; when, where, and how tried and punished.—If any person shall counsel, procure or command any other person to commit any felony, whether the same be a felony at common law or by virtue of any statute, the person so counseling, procuring, or commanding, shall be guilty of a felony, and may be indicted and convicted, either as an accessory before the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon; or may be indicted and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and may be punished in the same manner as any accessory before the fact to the same felony, if convicted as an accessory, may be punished; and the offense of the person so counseling, procuring, or commanding, howsoever indicted, may be inquired of, tried, determined and punished by any court which shall have jurisdiction to try the principal felon, in the same manner as if such offense had been committed at the same place as the principal felony or where the principal felony is triable, although such offense may have been committed at any place within or without the limits of the state; and in case the principal felony shall have been committed within the body of any county, and the offense of counseling, procuring or commanding shall have been committed within the body of any other county, the last-mentioned offense may be inquired of, tried, determined, and punished in either of such counties: Provided, that no person who shall be once duly tried for any such offense, whether as an accessory before the fact, or as for a substantive felony, shall be liable to be again indicted or tried for the same offense.—Rev., 3287.

231. Accessories punished, principal not tried.—In order that accessories may be convicted and punished in all cases, if any principal offender shall be in anywise convicted, it shall be lawful to proceed against an accessory, either before or after the fact, in the same manner as if the principal offender shall die or be pardoned or otherwise delivered before or after sentence or punishment, and every such accessory shall suffer the same punishment, if he be in anywise convicted, as he should have suffered if the principal had been sentenced or punished.—Rev., 3288.

232. Accessories to felonies after the fact; when, where, and how tried and punished.—If any person shall become an accessory after the fact to any felony, whether the same be a felony at common law or by virtue of any statute made, or to be made, such person shall be guilty of a felony, and may be indicted and convicted together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted for such felony whether the principal felon

shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and shall be punished by imprisonment in the state's prison or county jail for not less than four months nor more than ten years; and may also be fined in the discretion of the court. And the offense of such person may be inquired of, tried, determined and punished by any court which shall have jurisdiction of the principal felon, in the same manner as if the act, by reason whereof such person shall have become an accessory, had been committed at the same place as the principal felony, although such act may have been committed without the limits of the state; and in case the principal felony shall have been committed within the body of any county, and the act by reason whereof any person shall have become accessory shall have been committed within the body of any other county, the offense of such person guilty of a felony as aforesaid may be inquired of, tried, determined, and punished in either of said counties: Provided, that no person who shall be once duly tried for such felony, shall be again indicted or tried for the same offense.—Rev., 3289.

233. Accessories before the fact, how punished.—Any person who shall be convicted as an accessory before the fact in either of the crimes of murder, arson, burglary or rape, shall be imprisoned for life in the state's prison. An accessory before the fact to the stealing of any horse, mare, gelding or mule, on being duly convicted thereof, shall be imprisoned in the state's prison for not less than five nor more than twenty years, in the discretion of the court. Every accessory before the fact, in any other felony, shall be punished by imprisonment in the state's prison or county jail for not more than ten years, or may be fined, in the discretion of the court.—Rev., 3290.

234. Felonies and misdemeanors defined.—A felony is a crime which is or may be punishable by either death or imprisonment in the state's prison. Any other crime is a misdemeanor.—Rev., 3291.

235. Felonies, punishment of.—Every person who shall be convicted of any felony for which no specific punishment is prescribed by statute, shall be imprisoned in the county jail or state's prison not exceeding two years, or be fined, in the discretion of the court, or if the offense be infamous, the person offending shall be imprisoned in the county jail or state's prison not less than four months nor more than ten years, or be fined.—Rev., 3292.

236. Misdemeanors, punishment of.—All misdemeanors, where a specific punishment is not prescribed, shall be punished as misdemeanors at common law; but if the offense be infamous, or done in secrecy and malice, or with deceit and intent to defraud, the offender shall be punished by imprisonment in the county jail not less than four months nor more than ten years, or be fined.—Rev., 3293.

CHAPTER II.

ANIMALS.

237. Contagious diseases; rules for prevention of.—If any person shall wilfully violate any regulation made by the board of agriculture for the quarantine of infected animals or for the transportation of stock into this state, or for transporting stock from one section of the state to another section, or for the establishment and maintenance, in co-operation with the department of agriculture of the United States, of cattle districts or quarantine lines to prevent the infection of cattle from splenic or Spanish fever, Texas fever or other infectious or contagious diseases, he shall be guilty of a misdemeanor.—Rev., 3294.

238. Contagious disease, having, sold.—If any person shall sell, or offer for sale, or shall use, or expose, or cause or procure to be sold or offered for sale, or to be used or exposed, any horse or other animal having the disease known as glanders or farcy, or any other contagious or infectious disease known by such person to be dangerous to life, or which shall be diseased past recovery, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days.—Rev., 3295.

239. Contagious diseases; having glanders or farcy to be killed.—If the owner of any animal having the glanders or farcy shall omit or refuse, upon discovery or knowledge of its condition, to deprive the same of life at once, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days.—Rev., 3296.

240. Contagious diseases; hogs not to run at large.—If any person having swine affected with the disease known as hog cholera, or any other infectious or contagious disease, and discovering the same, or to whom notice of the fact shall be given, shall fail or neglect for five days to secure the diseased swine from the approach or contact with other hogs not so affected, by penning or otherwise securing and effectually isolating them, so that they shall not have access to any ditch, canal, branch, creek, river or other watercourse which passes beyond the premises of the owners of such swine, he shall be guilty of misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days.—Rev., 3297.

241. Contagious diseases; hogs dying with, buried or burned.—If any hog or other animal shall die with the hog cholera or other infectious disease, and the owner thereof shall fail to burn or to so bury the same as to secure it from the reach or contact with other hogs or other domestic animals of value, or if he shall throw or place such hog or other animal in any ditch, canal, branch, creek, river or other water course passing through his own premises, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days.—Rev., 3298.

242. Cruelty to, construed how.—If any person shall wilfully overdrive, overload, wound, injure, torture, torment, deprive of necessary sustenance, or cruelly beat, or needlessly mutilate, or kill, or cause or procure to be overdriven, overloaded, wounded, injured, tortured, tormented, or deprived of necessary sustenance, or to be cruelly beaten, needlessly mutilated, or killed as aforesaid, any useful beast, fowl or animal, every such offender shall for every such offense be guilty of a misdemeanor. In this section, and in every law which may be enacted, relating to animals, the words "animal" and "dumb animal" shall be held to include every living creature; the words "torture," "torment" or "cruelty" shall be held to include every act, omission or neglect, whereby unjustifiable physical pain, suffering or death is caused or permitted; but such terms shall not be construed to prohibit lawful shooting of birds, deer and other game for human food.—Rev., 3299; Laws 1907, c. 42.

243. Cruelty to, instigating or promoting.—If any person shall wilfully set on foot, or instigate, or move to carry on, or promote, or engage in, or do any act towards the furtherance of any act of cruelty to any animal, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days.—Rev., 3300.

244. Cruel to, by bear-baiting and cock-fighting.—If any person shall keep, or use, or in any way be connected with, or interested in the management of, or shall receive money for the admission of any

person to, any place kept or used for the purpose of fighting, or baiting any bull, bear, dog, cock, or other animal; or if any person shall encourage, aid or assist therein, or shall permit or suffer any place to be so kept or used, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not exceeding thirty days.—Rev., 3303.

245. Conveying in cruel manner.—If any person shall carry or cause to be carried in or upon any vehicle, or other conveyance, any animal in a cruel or inhuman manner, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days; and whenever he shall be taken into custody therefor by any officer, such officer may take charge of such vehicle or other conveyance and its contents, and deposit the same in some safe place of custody; and the necessary expenses which may be incurred for taking charge of and keeping and sustaining the same shall be a lien thereon, to be paid before the same can be lawfully reclaimed; or the said expenses, or any part thereof remaining unpaid, may be recovered by the person incurring the same of the owner of said animal in an action therefor.—Rev., 3202.

246. Dogs, female, running at large.—If any person owning or having any bitch shall knowingly permit her to run at large during the erotic stage of copulation, he shall be guilty of a misdemeanor, and fined not exceeding fifty dollars.—Rev., 3303.

247. Dogs, sheep-killing, to be killed.—If any person owning or having any dog that kills sheep or other domestic animal, upon satisfactory evidence of the same being made before any justice of the peace of the county, and the owner duly notified thereof, shall refuse to kill it, and shall permit such dog to go at liberty, he shall be guilty of a misdemeanor, and fined not more than fifty dollars or imprisoned not more than thirty days, and the dog may be killed by any one if found going at large.—Rev., 3304.

248. Dogs, failing to kill when mad.—If the owner of any dog shall know, or have good reason to believe, that his dog, or any dog belonging to any person under his control, has been bitten by a mad dog, and shall neglect or refuse immediately to kill the same, he shall forfeit and pay the sum of fifty dollars to him who will sue therefor; and the offender shall be liable to pay all damages which may be sustained by any one, in his property or person, by the bite of any such dog, and shall be guilty of a misdemeanor, and fined not more than fifty dollars or imprisoned not more than thirty days.—Rev., 3305.

249. Failure to comply with law as to strays.—If any person shall fail to comply with any of the requirements of the law as to strays, he shall be guilty of a misdemeanor, and upon conviction be fined not exceeding fifty dollars or imprisoned not exceeding thirty days.—Rev., 3306.

Note.—For duties as to strays, see chapter Strays.

250. False representation of pedigree.—If any person shall, with intent to defraud or cheat, knowingly represent any animal for breeding purposes as being of greater degree of any particular strain of blood than such animal actually possesses, and by such representation obtains from any other person money or other thing of value, he shall be guilty of a misdemeanor, and upon conviction thereof shall for each offense be punished by a fine of not less than sixty dollars nor more than three hundred dollars or by imprisonment for a term not exceeding six months.—Rev., 3307.

251. Fraudulent registration.—If any person shall, by false representation or pretense, with intent to defraud or cheat, obtain from any club, association, society or company for the improvement of the breed

of cattle, horses, sheep, swine, fowls, or other domestic animals or birds, a certificate of registration of any animal in the herd register of any such association, society or company, or a transfer of any such registration, upon conviction thereof he shall be punished by imprisonment for a term not exceeding three months or a fine not exceeding one hundred dollars, or by both such fine and imprisonment.—Rev., 3308.

252. Impounding unlawfully.—If any person shall wilfully and unlawfully take, drive, or in any way move any other person's horse, mule, ass, neat cattle, sheep, hog, goat, or dog, from the range or elsewhere, into any stock law district, or into the limits of any city or town, having the right to impound or destroy the same, with intent to secure the poundage or other penalty, or with intent to injure the owner of such animal, or to require him to pay any poundage or penalty on account of such animal, or for hire or reward, he shall be guilty of a misdemeanor. If any person shall unlawfully and wilfully remove any animal above named from any lawful enclosure, with intent to injure the owner, he shall be guilty of a misdemeanor.—Rev., 3309.

253. Impounding, releasing or receiving.—If any person unlawfully receives or releases any impounded stock, or unlawfully attempts to do so, he shall be guilty of a misdemeanor, and shall be fined not more than fifty dollars or imprisoned not more than thirty days.—Rev., 3310.

254. Impounded, to be fed and watered.—If any person shall impound, or cause to be impounded, in any pound or other place, any animal, and shall fail to supply to the same during such confinement a sufficient quantity of good and wholesome food and water, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days.—Rev., 3311.

255. Impounder misappropriating money.—If any impounder wilfully misappropriates money that he may receive from sale of stock impounded, or in any manner wilfully violates any provisions of the law in regard thereto, he shall be guilty of a misdemeanor, and on conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days.—Rev., 3312.

256. Injuries to, in inclosure without lawful fence.—If any person shall wilfully and unlawfully kill or abuse any horse, mule, hog, sheep or other cattle, the property of another, in any inclosure not surrounded by a lawful fence, such person shall be guilty of a misdemeanor, and fined or imprisoned at the discretion of the court.—Rev., 3313.

257. Injury of, in range.—If any person shall unlawfully and on purpose drive any live stock, lawfully running at large in the range, from said range, or shall kill, maim, or injure any live stock, lawfully running at large in the range or in the field or pasture of the owner, whether done with the actual intent to injure the owner, or to drive the stock from the range, or any other unlawful intent, every such person, his counselors, aiders, and abettors, shall be guilty of a misdemeanor. In the counties of Graham, Swain, Haywood, Jackson and Transylvania he shall be guilty of a felony and punished as if convicted of larceny: Provided, that nothing herein contained shall prohibit any person from driving out of the range any stock unlawfully brought from other states or places. In any indictment under this section it shall not be necessary to name in the bill or prove on the trial the owner of the stock maimed, killed or injured.—Rev., 3314.

258. Killing cattle and failing to show hide and ears.—If any person shall kill any neat cattle, sheep or hog in the woods or range, and shall for two days fail to show the hide and ears to the nearest justice or two freeholders, he shall be guilty of a misdemeanor.—Rev., 3315; Tyrrell county amendment, Laws 1907, c. 821.

259. Killing unmarked cattle in Haywood and Hyde counties.—If any person not being the owner of any unmarked neat cattle, sheep or hogs, shall kill any unmarked neat cattle, sheep or hogs in the range, such person shall, if the act be done with felonious intent, be guilty of larceny and punished as for that offense, and if not done with such intent shall be guilty of a misdemeanor: Provided, this section shall only apply to the counties of Haywood and Hyde.—Rev., 3316.

260. Mismarking.—If any person shall knowingly alter or deface the mark or brand of any other person's horse, mule or ass, neat cattle, sheep, goat, or hog, or shall knowingly mismark or brand any such beast that may be unbranded or unmarked, not properly his own, with intent to defraud any other person, the person so offending shall be guilty of a felony, and punished as if convicted of larceny.—Rev., 3317.

261. Poisoning with shrubs.—If any person shall throw into or leave exposed in any public square, street, lane, alley, or open lot in any city, town or village, or in any public road, any mockorange or other poisonous shrub, plant, tree or vegetable, he shall be liable in damages to any person injured thereby, and shall also be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned at the discretion of the court.—Rev., 3318.

262. Stock law territory; not to run at large in.—If any person shall allow his live stock to run at large within the limits of any county, township or district, in which a stock law prevails or shall prevail pursuant to law, he shall be guilty of a misdemeanor, and fined not exceeding fifty dollars or imprisoned not exceeding thirty days.—Rev., 3319.

263. Stock law territory; wilful driving on lands of.—If any person, in any stock law territory, shall wilfully, and not as the result of an accident, ride any horse or mule, or drive any horse or mule, either loose or to any vehicle or wagon, over the cultivated or enclosed lands of another, he shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding ten dollars.—Rev., 3320.

264. Stock law territory; riding or driving in.—If any person, by riding or driving upon the lands of another without permission, or while driving live stock along any roadway, public or private, shall wilfully, deliberately or recklessly do or permit to be done any actual injury to said land, or to the crops or other property growing or being thereon, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. But no such offender shall be proceeded against, unless the party injured, or some one in his behalf, shall cause a warrant to be issued, or an indictment to be found against the party offending, within fifteen days after the commission of the offense.—Rev., 3321.

265. Stock law territory; owner in, turning outside.—If any person having stock within the limits of a stock law territory, shall allow the same to run at large beyond the boundaries of said territory, he shall be guilty of a misdemeanor, and on conviction thereof shall be fined not more than fifty dollars or imprisoned not more than thirty days: Provided, that a person owning or renting land outside of the stock law territory may turn his stock upon the said land outside of the stock law district.—Rev., 3322.

266. Stone-horse running at large.—If any person shall let any stone horse or stone-mule of two years old or upwards run at large, he shall be guilty of a misdemeanor, and fined not exceeding fifty dollars or imprisoned not exceeding thirty days.—Rev., 3323. [Dare county amendment, Laws 1907, c. 412.]

CHAPTER III.

BANKS.

267. Examiner making false report.—If any bank examiner shall knowingly and willingly make any false or fraudulent report of the condition of any bank which shall have been examined by him, with the intent to aid or abet the officers, owners or agents of such bank in continuing to operate an insolvent bank; or if any such examiner shall receive or accept any bribe or gratuity, given for the purpose of inducing him not to file any report of an examination of any bank made by him, or shall neglect to make an examination of any bank by reason of having received or accepted any bribe or gratuity, he shall be guilty of a felony, and on conviction thereof shall be imprisoned in the state's prison for not less than four months nor more than ten years.—Rev., 3324.

268. Officers and agents, malfeasance of.—If any president, director, cashier, teller, clerk or agent of any bank or other corporation shall embezzle, abstract or wilfully misapply any of the moneys, funds or credits of the bank, or shall, without authority from the directors, issue or put forth any certificate of deposit, draw any order or bill of exchange, make any acceptance, assign any note, bond, draft, bill of exchange, mortgage, judgment or decree, or make any false entry in any book, report or statement of the bank with the intent in either case to injure or defraud or to deceive any officer of the bank, or if any person shall aid and abet in the doing of any of these things, he shall be guilty of a felony, and upon conviction shall be imprisoned in the state's prison for not less than four months nor more than fifteen years, and likewise fined, at the discretion of the court.—Rev., 3325.

269. Statements, making false.—If any person shall wilfully and knowingly subscribe to, or make, or cause to be made, any false statement or false entry in the books of any bank, corporation, partnership, firm or individual transacting a banking business, or shall knowingly subscribe to or exhibit false papers, with the intent to deceive any person authorized to examine into the affairs of said bank, corporation, partnership, firm or individual, or shall wilfully and knowingly make, state or publish any false statement of the amount of the assets or liabilities of any such corporation, partnership, firm or individual, he shall be guilty of a felony, and upon conviction thereof shall be imprisoned in the state's prison not less than four months nor more than ten years.—Rev., 3326.

CHAPTER IV.

BUILDING AND LOAN ASSOCIATIONS.

270. Agent acting without license.—If any person shall solicit business or act as agent for any foreign building or loan association or company in this state without having procured from the insurance commissioner a certificate that such association or company for which he offers to act is duly licensed by the state to do business for the current year in which such person solicits business or offers to act as agent, he shall be guilty of a misdemeanor.—Rev., 3327.

271. Collecting for, not listing stock for taxes.—If any building and loan association or officer of such association doing business in this state, or any local officer or person shall collect dues, assessments, premiums, fines or interest from any citizen of this state for any such

association which has failed or refused to list for taxation the stock held by citizens of this state, he shall be guilty of a misdemeanor and subject to fine or imprisonment, or both, in the discretion of the court.—Rev., 3328.

272. Failure to exhibit books; false statement.—If any person having in his possession or control any books, accounts or papers of any building and loan association licensed by law, shall refuse to exhibit the same to the insurance commissioner, or his agents, on demand, or shall knowingly or wilfully make any false statement in regard to the same, he shall be guilty of a misdemeanor, and fined and imprisoned at the discretion of the court.—Rev., 3329.

CHAPTER V.

BURGLARY.

273. Burglary, how punished.—Any person convicted, according to due course of law, of the crime of burglary in the first degree shall suffer death, and any one so convicted of burglary in the second degree shall suffer imprisonment in the state's prison for life, or for a term of years, in the discretion of the court.—Rev., 3330.

274. Burglary in first and second degrees.—There shall be two degrees in the crime of burglary as defined at the common law. If the crime be committed in a dwelling-house, or in a room used as a sleeping apartment in any building, and any person is in the actual occupation of any part of said dwelling-house or sleeping apartment at the time of the commission of said crime, it shall be burglary in the first degree. If the said crime be committed in a dwelling-house or sleeping apartment not actually occupied by any one at the time of the commission of said crime, or if it be committed in any house within the curtilage of a dwelling-house or in any building not a dwelling-house, but in which is a room used as a sleeping-apartment and not actually occupied as such at the time of the commission of said crime, it shall be burglary in the second degree.—Rev., 3331.

275. Burglary, breaking out of dwelling-house.—If any person shall enter the dwelling-house of another with intent to commit any felony or other infamous crime therein, or being in such dwelling-house, shall commit any felony or other infamous crime therein, and shall, in either case, break out of the said dwelling-house in the night time, such person shall be guilty of burglary.—Rev., 3332.

276. Breaking into houses otherwise than burglariously.—If any person shall break or enter a dwelling-house of another otherwise than by a burglarious breaking; or shall break and enter a store-house, shop, warehouse, banking-house, counting-house, or other building, where any merchandise, chattel, money, valuable security, or other personal property shall be; or shall break and enter any uninhabited house, with intent to commit a felony or other infamous crime therein; every such person shall be guilty of a felony, and imprisoned in the state's prison or county jail for not less than four months, nor more than ten years.—Rev., 3333.

277. Burglary, intent to commit.—If any person shall be found armed with any dangerous or offensive weapon, with the intent to break or enter a dwelling, or other building whatsoever, and to commit a felony or other infamous crime therein; or shall be found having in his possession, without lawful excuse, any pick-lock, key or other implement of house-breaking; or shall be found in any such building, with intent

to commit a felony or other infamous crime therein, such person shall be guilty of a felony and punished by fine or imprisonment in the state's prison, or both, in the discretion of the court.—Rev., 3334. Laws 1907, c. 822.

CHAPTER VI.

BURNINGS.

278. Arson.—Any person convicted according to due course of law of the crime of arson shall suffer death.—Rev., 3335.

279. Attempts.—If any person shall wilfully attempt to burn any dwelling-house, uninhabited house, barn, stable, or outhouse, or mill, manufacturing house, cotton gin, tobacco barn, granary or turpentine distillery, the property of another, he shall be guilty of a felony, and punished by imprisonment in the state's prison or county jail, and may also be fined, in the discretion of the court.—Rev., 3336.

280. Bridges and buildings.—If any person, with intent to destroy the same, shall wilfully and maliciously set fire to and burn any public bridge, or private toll-bridge, or the bridge of any incorporated company, or any fire-engine house, or any house belonging to any county or incorporated town, used for public purposes other than the keeping of archives, documents and public papers, or any house belonging to an incorporated company and used in the business of such company; or if any person shall wilfully and maliciously attempt to burn any of the said houses or bridges, or any of the houses or buildings mentioned in this chapter, the person so offending shall be guilty of a felony and punished by imprisonment in the state's prison, or county jail, for not less than four months, nor more than ten years.—Rev., 3337.

281. Churches and other buildings.—If any person shall wantonly and wilfully set fire to any church, chapel or meeting-house, or to any stable, coach-house, outhouse, warehouse, office, shop, mill, barn or granary, or to any building or erection used in carrying on any trade or manufacture, or any branch thereof, whether the same or any of them respectively shall then be in the possession of the offender, or in the possession of any other person, he shall be guilty of felony, and imprisoned in the state's prison for not less than two nor more than forty years.—Rev., 3338.

282. Crops in field.—If any person shall wilfully burn and destroy any other person's corn, cotton, wheat, barley, rye, oats, buckwheat, rice, tobacco, hay, straw, fodder, shucks or other provender in a stack, hill, rick or pen, or secured in any other way out of doors, or grass or sedge standing on the land, he shall be guilty of a felony, and punished by imprisonment in the county jail or state's prison for not less than four months nor more than five years.—Rev., 3339.

283. Dwelling-houses for fraudulent purposes.—If any person, being the occupant of any building used as a dwelling-house, whether such person be the owner thereof or not, or, being the owner of any unoccupied building designed or intended as a dwelling-house, shall wilfully and wantonly or for a fraudulent purpose set fire to such building, he shall be guilty of a felony, and shall be punished by imprisonment in the state's prison or county jail, and may also be fined, in the discretion of the court.—Rev., 3340.

284. Gin-house, tobacco house or stable.—Every person convicted of any wilful burning of any gin-house or tobacco house, or any part thereof, or, in the night time, of any stable containing a horse or a

mule, or cattle, shall be imprisoned in the state's prison not less than two nor more than ten years.—Rev., 3341.

285. Incendiary fires, duty of city officers.—If any town or city officer shall fail, neglect or refuse to comply with any of the requirements of the law in regard to investigation of incendiary fires, he shall be guilty of a misdemeanor, and may be fined not less than twenty-five nor more than two hundred dollars.—Rev., 3342.

286. Incendiary fires, duty of owner of premises.—If the owner or occupant of any building or premises shall fail to comply with the orders of the chief of the fire department, or of the insurance commissioner, he shall be guilty of a misdemeanor, and fined not less than ten nor more than fifty dollars for each day's neglect.—Rev., 3343.

287. Public buildings.—If any person shall wilfully and maliciously burn the state-house, or any of the public offices of the state, or any court-house, jail, arsenal, clerk's office, register's office, or any house belonging to any county or incorporated town in the state, or to any incorporated company whatever, in which are kept the archives, documents, or public papers of such county, town, or corporation, he shall, on conviction, be imprisoned in the state's prison for not less than five nor more than ten years.—Rev., 3344.

288. School-house.—If any person shall wilfully set fire to any school-house, or procure the same to be done, he shall be guilty of a misdemeanor, and upon conviction shall be punished by imprisonment in the state's prison or the county jail, and may also be fined, in the discretion of the court.—Rev., 3345.

289. Woods.—If any person shall set fire to any woods, except it be his own property, or, in that case, without first giving notice in writing to all persons owning lands adjoining to the woodlands intended to be fired, at least two days before the time of firing such woods, and also taking effectual care to extinguish such fire before it shall reach any vacant or patented lands near to or adjoining the lands so fired, he shall, for every such offense, forfeit and pay to any person who shall sue for the same fifty dollars, and be liable to any one injured in an action, and shall moreover be guilty of a misdemeanor.—Rev., 3346.

290. Woods, from camp fires.—If any wagoner or other person encamping in the open air shall leave his camp without totally extinguishing the camp fires, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding fifty dollars, or imprisoned not exceeding thirty days.—Rev., 3347.

CHAPTER VII.

CHASTITY.

291. Bawdy house cases; evidence of reputation, etc.—On a prosecution in any court for keeping a disorderly house or bawdy house, or permitting a house to be used as a bawdy house, or used in such a way as to make it disorderly, or a common nuisance, evidence of the general reputation or character of the house shall be admissible and competent; and evidence of the lewd, dissolute, and boisterous conversation of the inmates and frequenters, while in and around the house, shall be prima facie evidence of the bad character of the inmates and frequenters, and of the disorderly character of the house. The manager or person having the care, superintendency or government of a

disorderly house or bawdy house is the "keeper" thereof, and that one who employs another to manage and conduct a disorderly house or bawdy house is also the "keeper" thereof.—Laws 1907, c. 779.

291a. Bawdy house keepers and inmates are vagrants.—See section 697a *infra*.—Laws 1907, c. 1012.

292. Carnal knowledge of virtuous girls between ten and fourteen years of age.—If any person shall unlawfully carnally know or abuse any female child over ten and under fourteen years of age, who has never before had sexual intercourse with any person, he shall be guilty of a felony and fined or imprisoned in the state's prison, in the discretion of the court.—Rev., 3348.

293. Crime against nature.—If any person shall commit the abominable and detestable crime against nature, with mankind or beast, he shall be imprisoned in the state's prison not less than five nor more than sixty years.—Rev., 3349.

294. Fornication and adultery.—If any man and woman, not being married to each other, shall lewdly and lasciviously associate, bed and cohabit together, they shall be guilty of a misdemeanor: Provided, that the admissions or confessions of one shall not be received in evidence against the other.—Rev., 3350.

295. Incest between certain near relatives.—In all cases of carnal intercourse between grandparent and grandchild, parent and child, and brother and sister, of the half or whole blood, the parties shall be guilty of a felony, and punished for every such offense by imprisonment in the state's prison for a term not exceeding five years, in the discretion of the court.—Rev., 3351.

296. Incest between uncle and niece, etc.—In all cases of carnal intercourse between uncle and niece, and nephew and aunt, the parties shall be guilty of a misdemeanor, and punished by fine or imprisonment, in the discretion of the court.—Rev., 3352.

297. Lewd women within three miles of college.—If any loose woman or woman of ill-fame shall commit any act of lewdness with or in the presence of any student, who is under twenty-one years old, of any boarding-school or college, within three miles of such school or college, she shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. Upon the trial of any such case students may be competent but not compellable to give evidence. But no prosecution shall be had in such cases after the lapse of six months.—Rev., 3353.

298. Seduction.—If any man shall seduce an innocent and virtuous woman under promise of marriage, he shall be guilty of a felony, and upon conviction shall be fined or imprisoned at the discretion of the court, and may be imprisoned in the state's prison not exceeding the term of five years: Provided, the unsupported testimony of the woman shall not be sufficient to convict: Provided further, that marriage between the parties shall be a bar to further prosecution hereunder.—Rev., 3354.

Note.—See Crimes, subchapter Person.

CHAPTER VIII.

DOMESTIC RELATIONS.

299. Abandonment of family by husband.—If any husband shall wilfully abandon his wife without providing adequate support for such wife, and the children which he may have begotten upon her, he shall be guilty of a misdemeanor.—Rev., 3355.

300. Abandonment, evidence of.—If the fact of abandonment and failure to provide adequate support of wife and children shall be proved, or, while being with such wife, neglect by the husband to provide for the adequate support of such wife and children, shall be proved, then the fact that such husband neglects applying himself to some honest calling for the support of himself and family, but is found sauntering about, endeavoring to maintain himself by gaming or other undue means, or is a common frequenter of drinking houses, or is a known common drunkard, shall be presumptive evidence that such abandonment and neglect is wilful.—Rev., 3356.

301. Abandonment, failing to support family.—If any husband, while living with his wife, shall wilfully neglect to provide adequate support for such wife or the children which he has begotten upon her, he shall be guilty of a misdemeanor.—Rev., 3357.

302. Abduction of children.—If any one shall abduct, or by any means induce any child under the age of fourteen years, who shall reside with the father, mother, uncle, aunt, brother or elder sister, or shall reside at a school, or be an orphan and reside with a guardian, to leave such person or school, he shall be guilty of a felony, and on conviction shall be fined or imprisoned in the state's prison for a period not exceeding fifteen years.—Rev., 3358.

303. Abduction, conspiracy for.—If any one shall conspire to abduct, or by any means shall induce any child under the age of fourteen years, who shall reside with any of the persons designated in the preceding section, or at school, to leave the persons aforesaid or the school, he shall be guilty of a like offense, and on conviction shall be punished as prescribed in the preceding section: Provided, that no one who may be a nearer blood relation to the child than the persons named in said section shall be indicted for either of said offenses.—Rev., 3359.

304. Abduction of married women.—If any male person shall abduct or elope with the wife of another he shall be guilty of a felony, and upon conviction shall be imprisoned not less than one year nor more than ten years: Provided, that the woman, since her marriage, has been an innocent and virtuous woman: Provided, that no conviction shall be had upon the unsupported testimony of any such married woman.—Rev., 3360.

305. Bigamy.—If any person, being married, shall marry any other person, during the life of the former husband or wife, whether the second marriage shall have taken place in the state of North Carolina or elsewhere, every such offender, and every person counseling, aiding or abetting such offender, shall be guilty of felony, and imprisoned in the state's prison or county jail, for any term not less than four months nor more than ten years; and any such offense may be dealt with, tried, determined and punished in the county where the offender shall be apprehended, or be in custody, as if the offense had been actually committed in that county: Provided, that nothing herein shall extend to any person marrying a second time, whose husband or wife shall have been continually absent from such person for the space of seven years then last past, and shall not have been known by such person to have been living within that time, nor shall extend to any person who at the time of such second marriage shall have been lawfully divorced from the bond of the first marriage, nor to any person whose former marriage shall have been declared void by the sentence of any court of competent jurisdiction.—Rev., 3361.

306. Children under twelve not worked in factories.—If any mill owner, superintendent or other person acting in behalf of a factory or manufacturing establishment shall knowingly and wilfully employ any child under twelve years of age to work in any factory or manufactur-

ing establishment, except in oyster canning and packing manufactories where said canning and packing manufactories pay for opening or shucking oysters by the gallon or bushel, he shall be guilty of a misdemeanor.—Rev., 3362.

307. Children under eighteen, hours of labor regulated.—If any mill owner, superintendent or other person acting in behalf of a factory or manufacturing establishment shall knowingly and wilfully require any person under eighteen years of age, except engineers, firemen, machinists, superintendents, overseers, section and yard hands, office men, watchmen or repairers of breakdowns, to work in such factories or establishments a longer period than sixty-six hours in one week, he shall be guilty of a misdemeanor.—Rev., 3363.

308. Children; parents misstating age of.—If any parent or person standing in relation of parent, upon hiring his children to any factory or manufacturing establishment, shall fail to furnish such establishment a written statement of the age of such child or children being so hired, and if any such parent, or person standing in the relation of parent to such child or children shall, in such written statement misstate the age of such child or children being so employed, he shall be guilty of a misdemeanor, and upon conviction shall be punished at the discretion of the court.—Rev., 3364.

309. Child labor in factories regulated.—No child under twelve years of age shall be employed or worked in any factory or manufacturing establishment within this state: Provided, that, after one thousand nine hundred and seven no child between the ages of twelve and thirteen years of age shall be employed or work in a factory except in apprenticeship capacity, and only then after having attended school four months in the preceding twelve months. Not exceeding sixty-six hours shall constitute a week's work in all factories and manufacturing establishments of this state. No person under eighteen years of age shall be required to work in such factories or establishments a longer period than sixty-six hours in one week: Provided, that this section shall not apply to engineers, firemen, machinists, superintendents, overseers, section and yard hands, office men, watchmen or repairers of breakdowns. All parents, or persons standing in relation of parent, upon hiring their children to any factory or manufacturing establishment, shall furnish such establishment a written statement of the age of such child or children being so hired, and certificate as to school attendance; and any parent, or person standing in the relation of parent to such child or children, who shall in such written statement misstate the age of such child or children being so employed, or their school attendance, shall be guilty of a misdemeanor, and upon conviction shall be punished at the discretion of the court. Any mill-owner, superintendent or manufacturing establishment who shall knowingly or wilfully violate the provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be punished at the discretion of the court. After one thousand nine hundred and seven no boy or girl under fourteen years old shall work in a factory between the hours of eight p. m. and five a. m. This act shall be in force from and after January first, one thousand nine hundred and eight.—Laws 1907, c. 463.

Note.—For exposing children to contagious diseases, see s. 390.

310. Enticing servant to leave master.—If any person shall entice, persuade and procure any servant by indenture, or any servant who shall have contracted in writing or orally to serve his employer, to unlawfully leave the service of his master or employer; or if any person shall knowingly and unlawfully harbor and detain, in his own service and from the service of his master, or employer, any servant who shall unlawfully leave the service of such master, or employer,

then, in either case, such person and servant shall be guilty of a misdemeanor and fined not exceeding one hundred dollars or imprisoned not exceeding six months.—Rev., 3365.

311. Landlords and tenants violating contracts, certain counties.—

If any tenant or cropper shall procure advances from his landlord to enable him to make a crop on the land rented by him, and then will fully abandon the same without good cause and before paying for such advances; or if any landlord shall contract with a tenant or cropper by agreeing to furnish him advances to enable him to make a crop, and shall wilfully fail or refuse to furnish said advances according to his agreement without good cause, he shall be guilty of a misdemeanor and fined not exceeding fifty dollars or imprisoned not exceeding thirty days; and any person who employs a tenant or cropper who has violated the provisions of this section, with knowledge of such violation, shall be liable to the landlord furnishing such advances for the amount thereof, and shall also be guilty of a misdemeanor, and fined not exceeding fifty dollars or imprisoned not exceeding thirty days. This section shall apply to the following counties only: Wayne, Lenoir, Greene, Johnston, Jones, Onslow, Craven, Cleveland, Sampson, Pitt, Duplin, Gates, Cumberland, Perquimans, Chowan, Robeson, Bladen, Nash, Harnett, Edgecombe, Hertford, Wilson, Rockingham, Pender, Currituck, Gaston, Northampton, Beaufort, Chatham, Tyrrell, Mecklenburg, Halifax, Caswell, Camden, Cabarrus, Columbus, Martin, Montgomery, Washington, Wake, Rowan, Rutherford, Bertie, Alexander, Pamlico and Warren.—Rev., 3366; Laws 1907, cc. 84, 595, 639, 719, 869.

312. Landlords and tenants violating contracts in certain other counties.—

If any tenant or cropper shall procure advances from his landlord to enable him to make a crop on the land rented by him and then wilfully refuse to cultivate such crops or wilfully abandon the same without good cause and before paying for such advances; or if any landlord who induces another to become tenant or cropper by agreeing to furnish him advances to enable him to make a crop, shall wilfully fail or refuse to furnish such advances according to his agreement without good cause; or if any person shall entice, persuade or procure any tenant, lessee or cropper, who has made a contract agreeing to cultivate the land of another, to abandon, or to refuse or fail to cultivate, such land, or after notice shall harbor or detain on his own premises, or on the premises of another, any such tenant, lessee or cropper, he shall be guilty of a misdemeanor and fined not more than fifty dollars or imprisoned not more than thirty days. Any person who employs a tenant or cropper who has violated the provisions of this section with knowledge of such violation shall be liable to the landlord furnishing such advances for the amount thereof. This section shall only apply to the following counties: Wake, Hyde, Anson, Hertford, Sampson, Franklin, Union, Halifax, Richmond, Rowan, Rutherford, Bertie, Lincoln, Moore.—Rev., 3367; Laws 1907, cc. 84, 238, 543, 595, 810.

Note.—For Greene County act, see Laws 1907, c. 981.

313. Marriage with female under fourteen.—If any person shall marry a female under the age of fourteen years, he shall be guilty of a misdemeanor.—Rev., 3368.

314. Miscegenation.—All marriages between a white person and a negro, or between a white person and a person of negro descent to the third generation inclusive, are forever prohibited, and shall be void. And any person violating this section shall be guilty of an infamous crime, and punished by imprisonment in the county jail or state's prison not less than four months nor more than ten years, and may also be fined, in the discretion of the court.—Rev., 3369.

315. Miscegenation; register of deeds; minister; justice.—If any register of deeds shall knowingly issue any license for marriage between any person of color and a white person; or if any clergyman, minister of the gospel, or justice of the peace shall knowingly marry any such person of color to a white person, the person so offending shall be guilty of a misdemeanor.—Rev., 3370.

316. Marriage license; obtaining, by false representation.—If any person shall obtain a marriage license for the marriage of persons under the age of eighteen years by misrepresentation or false pretenses, he shall be guilty of a misdemeanor, and upon conviction shall for such offense be fined not exceeding fifty dollars, or imprisoned not exceeding thirty days, or both, at the discretion of the court.—Rev., 3371.

317. Marriage ceremony; performing, without license.—If any minister or officer shall marry any couple without a license being first delivered to him, as required by law, or after the expiration of such license, or shall fail to return such license to the register of deeds within two months after any marriage celebrated by virtue thereof, with the certificate appended thereto duly filled up and signed, he shall be guilty of a misdemeanor.—Rev., 3372.

318. Procuring possession of child unlawfully.—If any parent who has forfeited his rights to the care and custody of any child by abandonment, as provided by section one hundred and eighty, shall procure the possession and custody of such child, with respect to whom his or her rights and privileges are forfeited, otherwise than as by law provided, he shall be guilty of the crime of abduction and shall be punished as for abduction.—Rev., 3373.

319. Servant, hiring another's.—If any person shall knowingly hire, employ, harbor or detain in his own service any servant, employee, or wage hand of any other person, who shall have contracted in writing or orally, for a fixed period of time to serve his employer, and who shall have left the service of his employer in violation of his contract, he shall be guilty of a misdemeanor, and shall be civilly liable in damages to the party so aggrieved. This section shall apply to the following counties: Beaufort, Edgecombe, Person, Pitt, Washington, Warren, Vance, Pender, Halifax, Guilford, Granville, Hertford, Wayne, Caswell, Richmond, Wake.—Rev., 3374; Laws 1907, cc. 238, 402.

CHAPTER IX.

DRAINAGE.

320. Canal dug under parol agreement, unlawful to obstruct same.—Where two or more persons have dug a canal or ditch along any natural drain or waterway under parol agreement or otherwise, wherein all the parties shall have contributed to the digging thereof, if any servient or lower owner shall fill up or obstruct said canal or ditch without the consent of the higher owners, and without providing other drainage for the higher lands, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not more than thirty days.—Rev., 3375.

321. Drain cut by consent, obstructing.—If any person shall stop or in any way obstruct the passage of the water in any ditch or canal having been cut through lands of any person by consent of owner of said land, until after giving the interested parties reasonable time to comply with the mode of proceedings provided for the drainage of

lowlands, he shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days.—Rev., 3376.

322. Draining creeks, refusal to comply with order of board.—If any person shall refuse to comply with any requirements of a board duly appointed by the board of county commissioners to provide for the drainage of any creek, swamp, or branch, he shall be guilty of a misdemeanor and fined not exceeding two hundred dollars, or imprisoned not exceeding two years.—Rev., 3377.

323. Drainage districts, failure to comply with law; obstructing streams in.—If any person shall violate any of the provisions of law in reference to drainage districts as provided in chapter eighty-eight, subchapter Drainage Districts, or shall leave any log, brush, trash or other thing where it is liable to wash into an adjacent stream and obstruct the flow of water, or cut any tree so as to fall in a stream or place any other obstruction in a stream in a drainage district, he shall be fined not more than fifty dollars or imprisoned not more than thirty days.—Rev., 3378.

324. Draining lowlands, refusal to act as commissioner.—If any person having been duly summoned by the county surveyor to act as a commissioner for the drainage of any creek, swamp, branch, or lowlands, shall refuse to serve, he shall be guilty of a misdemeanor and fined not exceeding fifty dollars, or imprisoned not exceeding thirty days.—Rev., 3379.

325. Drains, obstructing, when necessary for mining.—If any person shall obstruct any drain or ditch constructed under the provisions of the law in regard to mines, he shall be guilty of a misdemeanor.—Rev., 3380.

326. Drains, ditches, dams; obstructing or injuring.—If any person shall obstruct any drain or ditch, or injure any dam constructed by virtue of any special proceedings, as provided in the chapter on Mills, he shall be guilty of a misdemeanor.—Rev., 3381.

327. Drainways, protection of, in certain counties.—If any person shall fell any tree in any ditch, canal or natural drainway of any farm, unless he shall remove the same and put such ditch, canal or natural drainway in as good condition as it was before such tree was so felled; or if any person shall stop up or fill in such ditch, canal or drainway and thereby obstruct the free passage of water along the said ditch, canal or drainway, unless the said person shall first secure the written consent of the landowner and those damaged by such obstruction in said ditch, canal and drainway, or unless such person so filling in and stopping up such ditch, canal or drainway shall, upon the demand of the person so damaged, clean out and put the said ditch, canal or drainway in as good condition as the same was before such filling in and stopping up of the said ditch, canal or drainway happened, he shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten nor more than fifty dollars, or imprisoned not less than ten nor more than thirty days.—Rev., 3382.

328. Sawdust in streams—If any person shall throw sawdust into any stream, he shall be guilty of a misdemeanor and fined not more than fifty dollars or imprisoned not more than thirty days. This section shall apply to the following streams only: All streams in Pamlico county; Drowning creek and its tributaries in Montgomery, Moore, Richmond, Cumberland and Robeson counties; Banners Elk in Watauga county; Little river and its tributaries in Montgomery county; Mark's creek and its tributaries in Wake county, above Wall's mill; all streams containing mountain or brook trout in Watauga, Clay, Macon and Haywood counties; all streams in Henderson, Transylvania

and Madison counties; Rock creek in Burke county; all streams in Yancey county; McLellan's creek in Upper Little River township in Harnett county; North and South Muddy creeks in McDowell county; Black river and its tributaries in Black River township in Harnett county; all streams in Graham county except Tennessee river; any stream in Davidson county (not to apply to mills erected prior to the eighth day of February, nineteen hundred and five); Brushy creek in Cleveland county; any stream in Macon, Swain and Warren; Wolf Island creek and its tributaries above Chandler's mill in Rockingham county; Clark's creek in Mount Gilead township in Montgomery county; any stream in Graham, Lincoln, Catawba and Alexander counties; South Fork river and its tributaries in Burke county; any stream in Guilford county; North Fork of New River and its tributaries in Ashe county; Clemmons' branch and Griffith's creek in Forsyth county; any stream in Mitchell county which now contains mountain trout or may hereafter be stocked by the government with any fish whatever.—Rev., 3382a; Laws 1907, cc. 27, 683, 370, 621. For Alexander county proviso see Laws 1907, c. 683; for Mitchell county act, see Laws 1907, c. 26.

329. Streams; failure of owner of dam to keep gates, etc.—If any owner or keeper of a mill whose dam is across any stream, shall fail to build a gate and slope therein, or thereafter to keep and maintain the same as required by commissioners to lay off rivers and creeks, he shall be guilty of a misdemeanor.—Rev., 3383.

CHAPTER X.

ELECTIONS.

330. Betting on.—If any person shall bet or wager any money or other thing of value upon any election held in this state he shall be guilty of a misdemeanor.—Rev., 3384.

331. Breaking up; disturbing officers.—If any person by force and violence shall break up or stay any election, by assaulting the officers thereof, or depriving them of the ballot-boxes, or by any other means, he and his aiders and abettors shall be guilty of a misdemeanor and imprisoned not more than three months, and shall pay such fine as the court shall adjudge, not exceeding one hundred dollars. If any person shall interrupt or disturb the registrar while actually engaged in the registration of voters, or the registrar or judges of election while engaged in holding the election, or in counting and adding up the result thereof; or the board of county canvassers, or the state board of canvassers, while engaged in the discharge of their official duties, or behave in a disorderly or boisterous manner in the presence of said officers while so engaged in the discharge of their official duties, or obstruct such officers in the legal discharge of the duties of their several positions, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days.—Rev., 3385.

332. Bribery of voters.—If any person shall at any time before or after an election, give or promise to give any money, property, or reward to any elector in order to secure his vote, he shall be guilty of a misdemeanor; and any person who shall receive or agree to receive any such bribe shall also be guilty of a misdemeanor.—Rev., 3386.

333. Discharging employee on account of vote.—If any person shall discharge from employment, or otherwise injure, threaten, oppress or attempt to intimidate any qualified voter of this state because of the vote such voter may or may not have cast in any election, he shall be guilty of a misdemeanor.—Rev., 3387.

334. Felon voting.—If any person be challenged as being convicted of any crime which excludes him from the right of suffrage, he shall be required to answer any question in relation to such alleged conviction; but his answer to such questions shall not be used against him in any criminal prosecution, but if any person so convicted shall vote at any election, without having been restored to the right of citizenship, he shall be guilty of a felony and punished by a fine not exceeding one thousand dollars, or imprisoned in the state's prison not exceeding two years, or both.—Rev., 3388.

335. Liquor, giving away or selling at.—If any person shall give away or shall sell any intoxicating liquor, except for medical purposes and upon prescription of a practicing physician, at any place within five miles of the polling place, at any time within twelve hours next preceding or succeeding any public election, whether general, local or municipal, or during the holding thereof, he shall be guilty of a misdemeanor, and fined not less than one hundred nor more than one thousand dollars.—Rev., 3389.

336. Oath, corruptly taking.—If any person shall corruptly take the oath prescribed for voters, he shall be guilty of perjury, and be fined not less than five hundred dollars nor more than one thousand dollars, and be imprisoned in the state's prison not less than two nor more than five years.—Rev., 3390.

337. Officer failing to discharge duty.—If any chairman of the county board of elections, or other returning officer whatever, shall wilfully, or of malice, neglect to perform any duty, act, matter or thing required or directed in the time, manner and form in which such duty, act, manner or thing is required to be performed in relation to the election and returns thereof, of the governor, representatives in congress, of justices of the supreme court, of judges of the superior court, of solicitors, or of electors for president and vice-president of the United States, or other officers, the person so offending shall be guilty of a felony, and fined not less than one thousand nor more than five thousand dollars, and be imprisoned not less than one nor more than three years.—Rev., 3391.

338. Permanent registration; taking false oath.—If any person shall knowingly register under the permanent registration law who is not qualified within the meaning of said law, and article six, section four, of the constitution, or if any person shall knowingly take any false oath in registering under the same, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than one thousand dollars or imprisoned not more than five years.—Rev., 3392.

339. Permanent registration, officer failing to discharge duty.—If any officer charged with any duty under the permanent registration law wilfully fails and neglects to perform the same, he shall be guilty of a misdemeanor, and upon conviction shall forfeit his office and be fined not more than one thousand dollars or imprisoned not more than five years.—Rev., 3393.

340. Registering or voting at more than one box.—If any person shall, with intent to commit a fraud, register or vote at more than one box or more than one time, or shall induce another to do so, or if any person shall illegally vote at any election, he shall be guilty of a felony and be imprisoned in the state's prison not less than six nor more than twelve months, or fined not less than one hundred nor more than five hundred dollars, at the discretion of the court; and if any registrar of voters, or any clerk or copyist, shall make any entry or copy with intent to commit a fraud, he shall be guilty of a like offense.—Rev., 3394.

341. Registering unlawfully.—If any person shall cause or procure his name to be registered in more than one election ward or precinct,

or shall cause or procure his name, or that of any other person, to be registered, who is not entitled to vote in the ward or election precinct wherein such registration is made, or shall falsely personate any registered voter, he shall be guilty of a felony, and shall be punished for every such offense by a fine not exceeding one thousand dollars, or imprisoned in the state's prison not exceeding two years, or both, in the discretion of the court.—Rev., 3395.

342. Returns, failure to make.—If any registrar or judge of election, or any county canvasser or commissioner, register of deeds, clerk or chairman of county board of elections shall fail to make the returns and perform the duties required of him, he shall be fined not less than five hundred dollars, or imprisoned not more than six months nor less than two months, at the discretion of the court.—Rev., 3396.

343. Returns, making false.—If any person shall make, or certify, or deliver, or transmit, a false return of an election held in this state, or make any erasure or alteration in the poll-books, he shall be guilty of a felony and imprisoned in the state's prison not less than one year, and shall, in addition, forfeit and pay five hundred dollars, one-half to the use of the person who shall sue for the same, and the other half to the use of the state.—Rev., 3397.

344. Returns, copy of; refusal.—If any register of deeds or clerk of the superior court shall refuse to make and give to any person a duly certified copy of the returns of any election, or of a tabulated statement of any election, the returns of which are by law deposited in his office, upon the tender of the fees therefor, he shall be guilty of a misdemeanor, and upon conviction dismissed from office and imprisoned for one year.—Rev., 3398.

345. Removal, officer acting after.—If any member of the county board of elections, or any registrar or judge of election, after having been removed as provided by law, and notified thereof, shall continue to exercise the duties of the position from which he has been removed, he shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned at the discretion of the court.—Rev., 3399.

346. Taxes, sheriff to furnish list of.—If any sheriff or tax collector shall fail, between the first day of May and the tenth day of May of any year in which a general election occurs, to certify to the clerk of the superior court of his county a list of all persons who have paid their poll tax for the previous year, he shall be guilty of a misdemeanor.—Rev., 3400.

347. Taxation, false certificate of exemption from.—If any person shall wilfully and knowingly present to any election officer any false certificate of exemption from taxation, he shall be guilty of forgery.—Rev., 3401.

348. Tax receipt given without payment.—If any tax collector or sheriff shall wilfully fail to give a tax receipt to any person paying his poll tax, or shall falsely date any tax receipt or duplicate thereof, he shall be guilty of a misdemeanor, and punished in the discretion of the court.—Rev., 3402.

CHAPTER XI.

EMBEZZLEMENT.

349. By railroad officers.—If any president, secretary, treasurer, director, engineer, agent or other officer of any railroad company shall embezzle any moneys, bonds, or other valuable funds or securities, with which such president, secretary, treasurer, director, engineer,

agent, or other officer shall be charged by virtue of his office or agency, or shall in any way, directly or indirectly, apply or appropriate the same, for the use or benefit of himself, or any other person, state or corporation, other than the company of which he is president, secretary or treasurer, director, engineer, agent or other officer, for every such offense the person so offending shall be guilty of a felony, and on conviction in the superior or criminal court of any county through which the railroad of such company shall pass, shall be imprisoned in the state's prison not less than three nor more than ten years, and fined not less than one thousand nor more than ten thousand dollars.—Rev., 3403.

350. Conspiracy for.—If any person shall agree, combine, collude, or conspire with the president, secretary, treasurer, director, engineer or agent of any railroad company, to commit any offense specified in the preceding section, such person so offending shall be guilty of felony, and on conviction in the superior or criminal court of a county through which the railroad or any company against which such offense may be perpetrated passes, shall be imprisoned in the state's prison for not less than three nor more than ten years, and fined not less than one thousand nor more than ten thousand dollars.—Rev., 3404.

351. Partner, surviving, converting assets.—If any surviving partner shall wilfully and intentionally convert any of the property, money or effects belonging to the partnership to his own use, and refuse to account for the same on settlement, he shall be guilty of a felony, and upon conviction shall be punished by fine or imprisonment in the state's prison in the discretion of the court.—Rev., 3405.

352. Property in possession by virtue of office or employment.—If any person exercising a public trust or holding a public office, or any guardian, administrator, or executor, or any officer or agent of a corporation, or any agent, consignee, clerk or servant (except apprentices, and other persons under the age of sixteen years) of any person, shall embezzle or fraudulently or knowingly and wilfully misapply or convert to his own use, or shall take, make way with or secrete, with intent to embezzle, or fraudulently or knowingly and wilfully misapply or convert to his own use any money goods or other chattels, bank note, check or order for the payment of money issued by or drawn on any bank or other corporation, or any treasury warrant, treasury note, bond or obligation for the payment of money issued by the United States or by any state, or any other valuable security whatsoever belonging to any other person or corporation, which shall have come into his possession or under his care, he shall be guilty of felony, and punished as in cases of larceny.—Rev., 3406.

353. State's bonds and securities by officer.—If any officer, agent or employee of the state, or other person having or holding in trust for the same any bonds issued by said state, or any security, or other property and effects of the same, shall embezzle or knowingly and wilfully misapply or convert the same to his own use, or otherwise wilfully or corruptly abuse the said trust, such offender and all persons aiding and abetting, or otherwise assisting therein, shall be guilty of a felony, and fined not less than ten thousand dollars, or imprisoned in the state's prison not less than twenty years, or both, at the discretion of the court.—Rev., 3407.

354. Trust funds by officers.—If any officer, agent, or employee of any city, county, or incorporated town, or of any penal, charitable, religious or educational institution; or if any person having or holding any moneys or property in trust for any city, county, incorporated town, penal, charitable, religious or educational institution, shall embezzle or otherwise wilfully and corruptly use or misapply the same for any purpose other than that for which such moneys or property

is held, such person shall be guilty of felony, and fined and imprisoned in the state's prison in the discretion of the court. If any clerk of the superior court, any sheriff, treasurer, register of deeds, or other public officer of any county or town of the state shall embezzle or wrongfully convert to his own use, or corruptly use, or shall misapply for any purpose other than that for which the same are held, or shall fail to pay over and deliver to the proper persons entitled to receive the same when lawfully required so to do, any moneys, funds, securities or other property which such officer shall have received by virtue or color of his office in trust for any person or corporation, such officer shall be guilty of a felony. The provisions of this section shall apply to all persons who shall go out of office and fail or neglect to account to or deliver over to their successor in office or other persons lawfully entitled to receive the same all such moneys, funds and securities or property aforesaid. The punishment shall be imprisonment in the state's prison or county jail, or fine, in the discretion of the court.—Rev., 3408.

355. Treasurer of benevolent society.—If any treasurer or other financial officer of any benevolent or religious institution, society or congregation shall lend any of the moneys coming into his hands to any other person or association without the consent of the institution, association or congregation, to whom such moneys belong; or, if he shall fail to account for such moneys when called on, he shall be guilty of a misdemeanor, and punished by fine or imprisonment, or both, in the discretion of the court.—Rev., 3409.

356. Taxes.—If any officer appropriates to his own use the state, county, school, city or town taxes, he shall be guilty of embezzlement, and may be punished not exceeding five years in the state's prison, at the discretion of the court.—Rev., 3410.

CHAPTER XII.

FENCES.

357. In stock law territory.—If any person wilfully tears down, or in any manner breaks a fence or gate, or leaves open a gate erected around a stock law territory, or wilfully breaks any enclosure within any township, district or county where a stock law is in force, and wherein any stock is confined, so that the same may escape therefrom, he shall be guilty of a misdemeanor, and shall be fined not more than fifty dollars or imprisoned not more than thirty days.—Rev., 3411.

358. Removal of common.—If any person owning, occupying, cultivating or being in possession of any lands under a common fence protecting the lands, crops or property of others, shall remove such fence or any part thereof during the time in which any crops are growing or being actually cultivated thereon, or property is protected by such fence, and before such crops are harvested, without the consent and permission of such person or persons whose crop or property is protected by such common fence, he shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days: Provided, that the provisions of this section shall not apply when ninety days' notice of such removal shall have been given to all persons owning, cultivating or in possession of lands surrounded by such common fence, or having property protected thereby, and when thereafter such fence shall be removed between the first day of January and the first day of March following such notice of intended removal.—Rev., 3412.

359. Wire, destroying.—If any person shall wilfully destroy, cut or injure any part of a wire fence or a fence composed partly of wire and partly of wood situated on the land of another, he shall be guilty of a misdemeanor, and upon conviction shall be imprisoned not exceeding thirty days or fined not exceeding fifty dollars.—Rev., 3413.

Note.—For other offenses relating to stock law, see *infra.*, chapter Animals.

CHAPTER XIII.

FISHING.

360. Fisheries, injury to.—If any person shall wilfully destroy or injure any platform or structure on any land covered by navigable waters, which land has been duly entered and granted and over which the owner has, according to law, acquired a prior right of fishery, or shall interfere with or molest the owner in the use thereof or of said prior right of fishery, he shall be guilty of a misdemeanor.—Rev., 3414.

361. Injuring platforms erected for.—If any person shall wilfully destroy or injure any platform or structure erected in any navigable water by the owner of the adjoining land for the purpose of drawing or hauling nets or seines thereon, or shall interfere with or molest the owner in the use of any such lands, he shall be guilty of a misdemeanor.—Rev., 3415.

362. In Cape Fear by non-residents.—If any person who is a non-resident of the state shall catch fish, for marketable purposes, in the waters of the Cape Fear river, or any of its tributaries, he shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned at the discretion of the court. —Rev., 3416.

363. Poisoning streams to kill fish.—If any person shall put any poisonous substance for the purpose of catching, killing or driving off any fish in any of the waters of a creek or river, he shall be guilty of a misdemeanor.—Rev., 3417.

364. Trout; catching with seines; shooting.—If any person shall catch mountain trout by seining at any time, or shall take them by shooting or otherwise, between the fifteenth day of October and the thirtieth day of December, he shall be guilty of a misdemeanor.—Rev., 3418.

CHAPTER XIV.

FORGERY.

365. Bank-note, check, etc.—If any person shall falsely make, forge or counterfeit, or cause or procure the same to be done, or willingly aid or assist therein, any bill or note in imitation of, or purporting to be, a bill or note of any incorporated bank in this state, or in any of the United States, or in any of the territories of the United States; or any order or check on any such bank or corporation, or on the cashier thereof; or any of the securities purporting to be issued by or on behalf of the state, or by or on behalf of any corporation, with intent to injure or defraud any person, bank or corporation, or the state, the person so offending shall be guilty of felony, and punished by imprisonment in the state's prison or county jail not less than four months nor more than ten years, or fined in the discretion of the court.—Rev., 3419.

366. Bank-notes, connecting different parts of.—If any person shall fraudulently connect together different parts of two or more bank-notes, or other genuine instruments, in such a manner as to produce another note or instrument, with intent to pass all of them as genuine, the same shall be deemed a forgery, and the instrument so produced a forged note or forged instrument, in like manner as if each of them had been falsely made or forged.—Rev., 3420.

367. Certificates of stock by officer of corporation.—If any officer or agent of a corporation shall, falsely and with a fraudulent purpose, make, with the intent that the same shall be issued and delivered to any other person by name or as a holder or bearer thereof, any certificate or other writing, whereby it is certified or declared that such person, or holder, or bearer, is entitled to or has interest in the stock of such corporation, when in fact such person, holder or bearer is not so entitled, or is not entitled to the amount of stock in such certificate or writing specified; or if any officer or agent of such corporation, or other person, knowing such certificate or other writing to be false or untrue, shall transfer, assign or deliver the same to another person, for the sake of gain, or with the intent to defraud the corporation, or any member thereof, or such person to whom the same shall be transferred, assigned or delivered, the person so offending shall be imprisoned in the county jail or state's prison not less than four months nor more than ten years.—Rev., 3421.

368. Counterfeiting coin.—If any person shall falsely make, forge or counterfeit, or cause or procure to be falsely made, forged or counterfeited, or willingly aid or assist in falsely making, forging or counterfeiting the resemblance or similitude or likeness of a Spanish milled dollar, or any coin of gold or silver, which is in common use and received in the discharge of contracts by the citizens of the state; or shall pass, utter, publish or sell, or attempt to pass, utter, publish or sell, or bring into the state from any other place, with intent to pass, utter, publish, or sell as true, any such false, forged or counterfeited coin, knowing the same to be false, forged or counterfeited, with intent to defraud any person whatsoever, every person so offending shall be guilty of a felony, and punished by imprisonment in the state's prison or county jail for not less than four months nor more than ten years.—Rev., 3422.

369. Counterfeiting, possession of tools for.—If any person shall have in his possession any instrument for the purpose of making any counterfeit similitude or likeness of a Spanish milled dollar, or other coin made of gold or silver, which is in common use and received in discharge of contracts by the citizens of the state, and shall be duly convicted thereof, the person so offending shall be imprisoned in the state's prison or county jail not less than four months nor more than ten years, or be fined not more than five hundred dollars.—Rev., 3423.

370. Deeds and other papers.—If any person, of his own head and imagination, or by false conspiracy or fraud with others, shall wittingly and falsely forge and make, or shall cause or wittingly assent to be forged or made, or shall show forth in evidence, knowing the same to be forged, any deed, lease or will, or any bond, writing obligatory, bill of exchange, promissory note, endorsement or assignment thereof; or any acquittance, or receipt for money or goods; or any receipt or release for any bond, note, bill or any other security for the payment of money; or any order for the payment of money or delivery of goods, with intent, in any of said instances, to defraud any person or corporation, and thereof shall be duly convicted, the person so offending shall be punished by imprisonment in the state's prison or county jail not less than four months nor more than ten years, or fined in the discretion of the court.—Rev., 3424.

371. Judgments, securities, etc., selling same.—If any person shall sell, by delivery, indorsement, or otherwise, to any other person, any judgment for the recovery of money purporting to have been rendered by a justice of the peace, or any bond, promissory note, bill of exchange, order, draft, or liquidated account purporting to be signed by the debtor (knowing the same to be forged), the person so offending shall be punished by imprisonment in the state's prison or county jail for not less than four months nor more than ten years.—Rev., 3425.

372. Names to petitions; using such petitions.—If any person shall wilfully sign, or cause to be signed, or wilfully assent to the signing of the name of any person without his consent, or of any deceased or fictitious person to any petition or recommendation, with the intent of procuring any commutation of sentence, pardon or reprieve of any person convicted of any crime or offense, or for the purpose of procuring such pardon, reprieve or commutation, to be refused or delayed by any public officer, or with the intent of procuring from any person whatsoever, either for himself or another, any appointment to office, or to any position of honor or trust, or with the intent to influence the official action of any public officer in the management, conduct or decision of any matter affecting the public, he shall be guilty of a felony, and fined not exceeding one thousand dollars, or imprisoned in the county jail or state's prison not exceeding five years, or both, at the discretion of the court; and if any person shall wilfully use any such paper for any of the purposes or intents above recited, knowing that any part of the signatures to such petition or recommendation has been signed thereto without the consent of the alleged signers, or that names of any dead or fictitious persons are signed thereto, he shall be guilty of a felony, and punished in like manner.—Rev., 3426.

373. Uttering forged paper.—If any person, directly or indirectly, whether for the sake of gain or with intent to defraud or injure any other person, shall utter or publish any such false, forged or counterfeited bill, note, order, check, or security, as is mentioned in the preceding section; or shall pass or deliver, or attempt to pass or deliver, any of them to another person (knowing the same to be falsely forged or counterfeited), the person so offending shall be punished by imprisonment in the county jail or state's prison not less than four months nor more than ten years.—Rev., 3427.

CHAPTER XV.

FRAUDS.

374. Blackmailing.—If any person shall knowingly send or deliver any letter or writing demanding of any person, with menaces, and without any reasonable or probable cause, any chattel, money or valuable security; or if any person shall accuse, or threaten to accuse, or shall knowingly send or deliver any letter or writing, accusing or threatening to accuse any person of any crime punishable by law with death or imprisonment in the state's prison, with a view or intent to extort or gain from such person any chattel, money or valuable security, every such offender shall be guilty of a misdemeanor.—Rev., 3428.

375. Cheating minors.—Whenever any person having a contract with any corporation, company or person for the manufacture or change of any raw material by the piece or pound, shall hire and employ any minor to assist in said work upon the faith of and by color of said contract, and with intent to cheat and defraud said minor, and shall

secure the contract price and shall wilfully fail to pay said minor when he shall have performed his part of said contract work, whether done by the day or by the job, the person so offending shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days.—Rev., 3428a.

376. Fairs, fraudulent entry of horses at.—If any person shall knowingly enter or cause to be entered for competition or to compete for any purse, prize, premium, stake or sweep-stake offered or given by any agricultural or other society, association or person in this state any horse, mare, gelding, colt or filly under an assumed name or out of its proper class, he shall be punished by fine of not less than one hundred nor more than one thousand dollars, or imprisonment in the state's prison for not less than one nor more than five years, or both fine and imprisonment, at the discretion of the court.—Rev., 3429.

Note.—See s. 623.

377. False lights on seashore.—If any person shall make or display, or cause to be made or displayed, any false light or beacon on or near the seacoast, for the purpose of deceiving and misleading masters of vessels, and thereby put them in danger of shipwreck, he shall be guilty of a felony, and imprisoned in the state's prison for not less than four months nor more than ten years.—Rev., 3430.

378. False pretense; obtaining advances under promise to work.—If any person, with intent to cheat or defraud another, shall obtain any advances in money, provisions, goods, wares or merchandise of any description, from any other person or corporation upon and by color of any promise or agreement that the person making the same will begin any work or labor of any description for said person or corporation from whom said advances are obtained, and said person so making said promise or agreement shall unlawfully and wilfully fail to commence or complete said work according to contract without a lawful excuse, he shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. And evidence of such promise or agreement to work, the obtaining of such advances thereon, and the failure to comply with such promise or agreement, shall be presumptive evidence of the intent to cheat and defraud at the time of obtaining such advances and making such promise or agreement, subject to be rebutted by other testimony which may be introduced by the defendant.—Rev., 3431.

379. False pretense; cheating by.—If any person shall knowingly and designedly, by means of any forged or counterfeited paper, in writing or in print, or by any false token, or other false pretense whatsoever, obtain from any person or corporation within the state any money, goods, property or other thing of value, or any bank-note, check or order for the payment of money, issued by or drawn on any bank or other society or corporation within this state or any of the United States, or on any treasury warrant, debenture, certificate of stock, or public security, or any order, bill of exchange, bond, promissory note, or other obligation, either for the payment of money or for the delivery of specific articles, with intent to cheat or defraud any person or corporation of the same, such person shall be guilty of a felony, and imprisoned in the state's prison not less than four months nor more than ten years, or fined, in the discretion of the court: Provided, that if, on trial of any one indicted for such crime, it shall be proved that he obtained the property in such manner as to amount to larceny, he shall not, by reason thereof, be entitled to be acquitted of the felony; and no person tried for such felony shall be liable to be afterwards prosecuted for larceny upon the same facts: Provided further, that it shall be sufficient in any indictment for obtaining or attempting to obtain any such property by false pretenses, to allege

that the party accused did the act with intent to defraud, without alleging an intent to defraud any particular person, and without alleging any ownership of the chattel, money or valuable security; and, on the trial of any such indictment, it shall not be necessary to prove an intent to defraud any particular person, but it shall be sufficient to prove that the party accused did the act charged with an intent to defraud.—Rev., 3432.

380. False pretense; obtaining signature by.—If any person, with intent to defraud or cheat another, shall designedly, by color of any false token or writing, or by any other false pretense, obtain the signature of any person to any written instrument, the false making of which would be punishable as forgery, or obtain from any person any money, goods, wares, merchandise or other property or valuable thing whatsoever, he shall be punishable by fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the state's prison for a term not less than one year nor more than five years, or both, at the discretion of the court.—Rev., 3433.

381. False pretense; obtaining advances by.—If any person shall obtain any advances in money, provisions, goods, wares or merchandise of any description, from any other person or corporation, upon any written representation that the person making the same is the owner of any article of produce, or of any other specific chattel or personal property, which property, or the proceeds of which the owner in such representation thereby agrees to apply to the discharge of the debt so created, and the owner shall fail to apply such produce or other property, or the proceeds thereof, in accordance with such agreement, or shall dispose of the same in any other manner than is so agreed upon by the parties to the transaction, the person so offending shall be guilty of a misdemeanor, whether he shall or shall not have been the owner of any such property at the time such representation was made.—Rev., 3434.

381a. False pretense; giving worthless checks, drafts and orders.—Every person who, with intent to cheat and defraud another, shall obtain money, credit, goods, wares, or any thing of value by means of a check, draft or order of any kind upon any bank, person, firm or corporation, not indebted to drawer, or where he has not provided for the payment or acceptance, and the same be not paid upon presentation, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, at the discretion of the court.—Laws 1907, c. 975.

382. Mortgaged property, disposing of; indictment; proof.—If any person, after executing a chattel mortgage, deed in trust, or other lien for a lawful purpose, shall make any disposition of any personal property embraced in such mortgage, deed in trust or lien, with intent to hinder, delay or defeat the rights of any person to whom or for whose benefit such deed was made, every person so offending, and every person with a knowledge of the lien buying the property embraced in any such deed or lien, and every person assisting, aiding or abetting the unlawful disposition of such property, with intent to hinder, delay or defeat the rights of any person to whom or for whose benefit any such deed or lien was made, shall be guilty of a misdemeanor, and punished by fine or imprisonment, or both, in the discretion of the court. In all indictments for violation of the provisions of this section, it shall not be necessary to allege or prove the person to whom any sale or disposition of the property was made, but proof of the possession of the property embraced in such chattel mortgage, deed in trust or lien, by the grantor thereof, after the execution of said chattel mortgage, deed in trust or lien, and while it is in force, and

further proof of the fact that the sheriff or other officer charged with the execution of the process can not after due diligence find said property under process directed to him for its seizure, for the satisfaction of such chattel mortgage, deed in trust or lien, or that the mortgagee demanded the possession thereof of the mortgagor for the purpose of sale to foreclose said mortgage, deed in trust or lien, after the right to such foreclosure had accrued, and that the mortgagor failed to produce, deliver or surrender the same to the mortgagee for that purpose, shall be prima facie proof of the fact of a disposition or sale of such property, by the grantor, with the intent to hinder, delay or defeat the rights of the person to whom said chattel mortgage, deed in trust or lien was made.—Rev., 3435.

383. Secreting property to hinder enforcement of lien.—Any person removing, exchanging or secreted any personal property on which a lien exists, with intent to prevent or hinder the enforcement of the lien, shall be guilty of a misdemeanor.—Rev., 3436.

384. Misbranding gold or silver articles.—Any person, firm, corporation or association who or which makes for sale, or sells, or offers to sell or dispose of, or has in his, her or its possession with intent to sell or dispose of, any article of merchandise made in whole or in part of gold or any alloy of gold, and having stamped, branded, engraved or imprinted thereon, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which said article is encased or enclosed any mark, indicating, or designed or intended to indicate, that the gold or alloy of gold in such article is of a greater degree of fineness than the actual fineness or quality of such gold or alloy, unless the actual fineness of such gold or alloy, in the case of flat-ware and watch-cases, be not less by more than three one-thousandths parts, and in the case of all other articles be not less by more than one-half karat than the fineness indicated by the marks stamped, branded, engraved or imprinted upon any part of such article, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which such article is encased or enclosed, according to the standards and subject to the qualifications hereinafter set forth, is guilty of a misdemeanor: Provided, that in any test for the ascertainment of the fineness of the gold or its alloy in any such articles, according to the foregoing standards, the part of the gold or of its alloy taken for the test, analysis or assay shall be such part or portion as does not contain or have attached thereto any solder or alloy of inferior fineness used for brazing or uniting the parts of said articles: Provided further, and in addition to the foregoing tests and standards, that the actual fineness of the entire quantity of gold and its alloys contained in any article mentioned in this section (except watch-cases), including all solder or alloy of inferior metal used for brazing or uniting the parts of the article (all such gold, alloys and solder being assayed as one piece), shall not be less by more than one karat than the fineness indicated by the mark stamped, branded, engraved or imprinted upon such article, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which said article is enclosed or encased.

Any person, firm, corporation or association who or which makes for sale, or sells, or offers to sell or dispose of, or has in his, her or its possession with intent to sell or dispose of, any article of merchandise made in whole or in part of silver or any alloy of silver, and having marked, stamped, branded or engraved or imprinted thereon, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which said article is encased or enclosed, the words "sterling silver" or "sterling," or any colorable imitation thereof, unless nine hundred and twenty-five one-thousandths of the component

parts of the metal appearing or purporting to be silver, of which said article is manufactured, are pure silver, subject to the qualifications hereinafter set forth, is guilty of a misdemeanor: Provided, that in the case of all such articles there shall be allowed a divergence in fineness of four one-thousandths parts from the foregoing standard.

Any person, firm, corporation or association who or which makes for sale, or sells, or offers to sell or dispose of, or has in his, her or its possession with intent to sell or dispose of, any article of merchandise made in whole or in part of silver or of any alloy of silver, and having marked, stamped, branded, engraved or imprinted thereon, or upon any card, tag or label attached thereto, or upon any box, package, cover or wrapper in which said article is encased or enclosed, the words "coin" or "coin silver," or any colorable imitation thereof, unless nine hundred one-thousandths of the component parts of the metal appearing or purporting to be silver, of which such article is manufactured, are pure silver, subject to the qualifications hereinafter set forth, is guilty of a misdemeanor: Provided, that in the case of all such articles there shall be allowed a divergence in fineness of four one-thousandths parts from the foregoing standards.

Any person, firm, corporation or association, who or which makes for sale, or sells, or offers to sell or dispose of, or has in his, her or its possession with intent to sell or dispose of, any article of merchandise made in whole or in part of silver or of any alloy of silver, and having stamped, branded, engraved or imprinted thereon, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which said article is encased or enclosed, any mark or word (other than the word "sterling" or the word "coin") indicating, or designed or intended to indicate, that the silver or alloy of silver in said article is of a greater degree of fineness than the actual fineness or quality of such silver or alloy of silver in said article, unless the actual fineness of the silver or alloy of silver of which said article is composed be not less by more than four one-thousandths parts than the actual fineness indicated by the said mark or word (other than the word "sterling" or "coin") stamped, branded, engraved or imprinted upon any part of said article, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which said article is encased or enclosed, subject to the qualifications hereinafter set forth, is guilty of a misdemeanor: Provided, that in any test for the ascertainment of the fineness of any such article mentioned in this section, according to the foregoing standards, the part of the article taken for the test, analysis or assay shall be such part or portion as does not contain or have attached thereto any solder or alloy of inferior metal used for brazing or uniting the parts of such article: And provided further, and in addition to the foregoing test and standards, that the actual fineness of the entire quantity of metal purporting to be silver contained in any article mentioned in this section, including all solder or alloy of inferior fineness used for brazing or uniting the parts of any such article (all such silver, alloy or solder being assayed as one piece), shall not be less by more than ten one-thousandths parts than the fineness indicated according to the foregoing standards, by the mark stamped, branded, engraved or imprinted upon such article, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which said article is encased or enclosed.

Any person, firm, corporation or association who or which makes for sale, or sells, or offers to sell or dispose of, or has in his, her or its possession with intent to sell or dispose of, any article of merchandise made in whole or in part of inferior metal, having deposited or plated thereon or brazed or otherwise affixed thereto a plate, plating, covering

or sheet of gold or of any alloy of gold, and which article is known in market as "rolled gold plate," "gold plate," "gold-filled," or "gold electro-plate," or by any similar designation, and having stamped, branded, engraved or imprinted thereon, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which said article is encased or enclosed, any word or mark usually employed to indicate the fineness of gold, unless said word be accompanied by other words plainly indicating that such article or some part thereof is made of rolled gold plate, or gold plate, or gold electroplate, or is gold-filled, as the case may be, is guilty of a misdemeanor.

Any person, firm, corporation or association who or which makes for sale, or sells, or offers to sell or dispose of, or has in his, her or its possession with intent to sell or dispose of, any article of merchandise made in whole or in part of inferior metal, having deposited or plated thereon or brazed or otherwise affixed thereto, a plate, plating, covering or sheet of silver or of any alloy of silver, and which article is known in the market as "silver plate" or "silver electroplate," or by any similar designation, and having stamped, branded, engraved or imprinted thereon, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which said article is encased or enclosed, the word "sterling" or the word "coin," either alone or in conjunction with any other words or marks, is guilty of a misdemeanor.

Every person, firm, corporation or association guilty of a violation of any one of the preceding sections of this act, and every officer, manager, director or managing agent of any such person, firm, corporation or association directly participating in such violation or consenting thereto, shall be punished by fine or imprisonment, or both, at the discretion of the court: Provided, that if the person charged with the violation of this act shall prove that the article concerning which the charge was made was manufactured prior to the thirteenth day of June, one thousand nine hundred and seven, then the charge shall be dismissed.—Laws 1907, c. 331.

385. Defrauding inn-keepers.—A person who obtains any lodging, food or accommodation at an inn, boarding-house or lodging-house without paying therefor, with intent to defraud the proprietor or manager, thereof, or who obtains credit at such inn, boarding-house or lodging-house by the use of any false pretense, or who, after obtaining credit or accommodation at such an inn, boarding-house or lodging-house, absconds and surreptitiously removes his baggage therefrom without paying for his food, accommodation or lodging, shall be guilty of a misdemeanor, and shall upon conviction be fined or imprisoned at the discretion of the court.—Laws 1907, c. 816.

CHAPTER XVI.

GOVERNMENT.

386. Rebellion against the state.—If any person shall incite, set on foot, assist or engage in a rebellion or insurrection against the authority of the state of North Carolina or the laws thereof, or shall give aid or comfort thereto, every person so offending in any of the ways aforesaid, shall be guilty of a felony and punished by imprisonment in the state's prison for not more than fifteen years, and be fined not more than ten thousand dollars.—Rev., 3437.

387. Rebellion or insurrection, conspiracy for.—If two or more persons shall conspire together to overthrow or put down, or to destroy by force, the government of North Carolina, or to levy war against the

government of this state, or to oppose by force the authority of said government, or by force, or by threats, to intimidate, or to prevent, hinder or delay the execution of any law of the state, or by force or fraud to seize or take possession of any firearms or property of the state aforesaid, against the will or contrary to the authority of said state, every person so offending in any of the ways aforesaid shall be guilty of a felony and imprisoned not more than ten years in the state's prison and be fined not exceeding five thousand dollars.—Rev., 3438.

388. Secret political societies.—If any person, for the purpose of compassing or furthering any political object, or aiding the success of any political party or organization, or resisting the laws, shall join or in any way connect or unite himself with any oath-bound secret political or military organization, society or association of whatsoever name or character, or shall form or organize or combine and agree with any other person or persons to form or organize any such organization, or as a member of any secret political or military party or organization shall use, or agree to use, any certain signs, grips or passwords, or any disguise of the person or voice, or any disguise whatsoever for the advancement of its object, and shall take or administer any extra-judicial oath or other secret, solemn pledge, or any like secret means, or if any two or more persons, for the purpose of compassing or furthering any political object, or aiding the success of any political party or organization, or for circumventing the laws, shall secretly assemble, combine or agree together, and the more effectually to accomplish such purposes, or any of them, shall use any certain signs, or grips, or passwords, or any disguise of the person or voice, or other disguise whatsoever; or shall take or administer any extra-judicial oath or other secret, solemn pledge, or if any persons shall band together and assemble to muster, drill or practice any militia evolutions, except by virtue of the authority of an officer recognized by law, or of an instructor in institutions or schools in which such evolutions form a part of the course of instruction, or if any person shall knowingly permit any of the acts and things herein forbidden to be had, done or performed on his premises, or on any premises under his control, or if any person being a member of any such secret political or military organization shall not at once abandon the same and separate himself entirely therefrom, every person so offending shall be guilty of a misdemeanor, and fined not less than ten nor more than two hundred dollars, or be imprisoned, or both, at the discretion of the court.—Rev., 3439.

CHAPTER XVII.

HEALTH.

389. Board of Health to notify school committees of contagious diseases.—The boards of health of cities and towns wherever organized, and, where not, the mayors of the same, and in other cases the county superintendent of health, shall give the school committee of the city or town, the principals of private schools and the superintendent of public instruction of the county, when the schools are in session, notice of all cases of contagious diseases reported to them according to law. A failure to perform this duty for twenty-four hours after the receipt of the notice shall be deemed a misdemeanor, and subject the delinquent upon conviction to a fine of not less than ten nor more than fifty dollars.—Rev., 3440.

390.—Children exposed to contagious diseases not to attend schools.—The school committees of public schools, superintendents of graded schools, and principals of private schools shall not allow any pupil to

attend the school under their control while any member of the household to which said pupil belongs is sick of either smallpox, diphtheria, measles, scarlet fever, yellow fever, typhus fever, cholera, mumps, whooping-cough, itch, or during a period of two weeks after the death, recovery or removal of such sick person; and any pupil coming from such household shall be required to present to the teacher of the school the pupil desires to attend a certificate from the attending physician, city health officer or county superintendent of health of the facts necessary to entitle him to admission in accordance with the above regulations. A wilful failure on the part of any school committee, superintendent of a graded school or principal of a private school to perform the duty required in this section shall be deemed a misdemeanor, and upon conviction shall subject each and every member of the same to a fine of not less than one nor more than twenty-five dollars: Provided, that the instructions in accordance with the provisions of this section given to the teachers of the schools within twenty-four hours after the receipt of each and every notice shall be deemed performance of duty on the part of the school committee. Any teacher of a public school and any principal of a private school failing to carry out the requirements of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than one nor more than twenty-five dollars.—Rev., 3441.

391. Diseased animals, meat of.—If any person shall knowingly and wilfully slaughter any diseased animal and sell or offer for sale any of the meat of such diseased animal for human consumption; or if any person knows that the meat offered for sale or sold for human consumption by him is that of any diseased animal, he shall be guilty of a misdemeanor, and fined or imprisoned, or both, in the discretion of the court.—Rev., 3442.

392. Householder failing to give notice of contagious disease.—If a householder knows that a person within his family is sick with either smallpox, diphtheria, scarlet fever, yellow fever, typhus fever, or cholera, he shall immediately give notice thereof to the health officer or mayor, if he resides in a city or incorporated town, otherwise to the county superintendent of health, and upon the death or recovery or removal of such person, the rooms occupied and the articles used by him shall be disinfected by such householder in the manner indicated in printed instructions furnished by the secretary of the state board of health. Any person neglecting or refusing to comply with any of the above provisions shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than one dollar nor more than fifty dollars.—Rev., 3443.

393. Food misbranded or adulterated.—(1) For the purpose of protecting the people of the state from imposition by the adulteration and misbranding of articles of food, drugs, confectionery or liquors, the board of agriculture shall cause to be procured from time to time, and under rules and regulations to be prescribed by them in accordance with section eleven of this act, samples of food, drugs, confectionery or liquors offered for sale in the state, and shall cause the same to be analyzed or examined microscopically or otherwise by the chemists or other experts of the department of agriculture. The board of agriculture is hereby authorized to make such publication of the results of the examination, analyses, and so forth, as they may deem proper.

(2) No person, firm or corporation, by himself or agent, shall manufacture, sell, expose for sale, or have in his possession with intent to sell, any article of food, drug, confectionery or liquor which is adulterated or misbranded within the meaning of this act, and any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and for such offense shall be fined not exceeding two hundred

dollars for the first offense and for each subsequent offense not exceeding three hundred dollars, or be imprisoned not exceeding one year, or both, in the discretion of the court; and such fines, less legal costs and charges, shall be paid into the treasury of the state for the benefit of the department of agriculture, to be used exclusively in executing the provisions of this act.

(3) The chemists or other experts of the department of agriculture shall make, under rules and regulations prescribed by the board of agriculture, examinations of specimens of food, drugs, confectionery or liquors offered for sale in North Carolina, which may be collected from time to time under their direction in various parts of the state; and if it shall appear from any such examinations that any such specimen is adulterated or misbranded within the meaning of this act, that notice thereof shall be given to the manufacturer or party from whom such sample was obtained. Any party so notified shall be given an opportunity to be heard under such rules and regulations as may be prescribed by the commissioner and the board of agriculture, and if it appears that any of the provisions of this act have been violated, the commissioner of agriculture shall certify the facts to the solicitor in the district in which such sample was obtained, and furnish that officer with a copy of the results of the analysis or other examinations of such article, duly authenticated by the analyst or other officer making such examination, under the oath of such officer. In all prosecutions arising under this act, the certificate of the analyst or other officer making the analysis or examination, when duly sworn to by such officer, shall be prima facie evidence of the fact or facts therein certified.

(4) It shall be the duty of every solicitor to whom the commissioner of agriculture shall report any violation of this act, to cause proceedings to be commenced and prosecuted without delay for the fines and penalties in such cases prescribed.

(5) The term "drug" as used in this act shall include all medicines and preparations recognized in the United States Pharmacopoeia or National Formulary for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation or prevention of disease of either man or other animals. The term "food" as used herein shall include all articles used for food, drink, confectionery, or condiment by man or other animals, whether simple, mixed or compound.

(6) For the purpose of this act an article shall be deemed to be adulterated:

In case of drugs:

First. If, when a drug is sold under or by a name recognized in the United States Pharmacopoeia or National Formulary, it differs from the standard of strength, quality or purity, as determined by the test laid down by the United States Pharmacopoeia or National Formulary official at the time of investigation: Provided, that no drug defined in the United States Pharmacopoeia or National Formulary shall be deemed to be adulterated under this provision if the standard of strength, quality or purity be plainly stated upon the bottle, box or other container thereof, although the standard may differ from that determined by the test laid down in the United States Pharmacopoeia or National Formulary.

Second. If its strength or purity fall below the professed standard or quality under which it is sold.

In case of confectionery:

First. If it contains terra alba, barytes, talc, chrome yellow, or other mineral substance of poisonous color or flavor, or other ingredient deleterious or detrimental to health, or any vinous, malt or spirituous liquor or compound or narcotic drug.

In the case of food:

First. If any substance has been mixed or packed with it, so as to reduce or lower or injuriously affect its quality or strength.

Second. If any substance has been substituted wholly or in part for the article.

Third. If any valuable constituent of the article has been wholly or in part abstracted.

Fourth. If it be mixed, colored, powdered, coated, or stained in a manner whereby damage or inferiority is concealed.

Fifth. If it contains any added poisonous or other added deleterious ingredient which may render such article injurious to health. If it contains any of the following substances, which are hereby declared deleterious and dangerous to health when added to human food, to-wit: Colors which contain antimony, arsenic, barium, lead, cadmium, chromium, copper, mercury, uranium, or zinc; or the following colors: gamboge, corallin, picric acid, aniline, or any of the coal-tar dyes; saccharine, dulcin, glucin, or any other artificially or synthetically prepared substitute for sugar; paraffin, formaldehyde, beta-naphthol, abstrastol, benzoic acid or benzoates, salicylic acid or salicylates, boric acid or borates, sulphurous acid or sulphites, hydrofluoric acid or any fluorine compounds, sulphuric acid or potassium sulphate or wood alcohol: Provided, that catsups and condimental sauces may, when the fact is plainly and legibly stated in the English language on the wrapper and label of the package in which it is retailed, contain not to exceed two-tenths of one per cent of benzoic acid or its equivalent in sodium benzoate. Fermented liquors may contain not to exceed two-tenths of one per cent of combined sulphuric acid and not to exceed eight-thousandths of one per cent of sulphurous acid.

Sixth. If it consists in whole or in part of a filthy, decomposed or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that had died otherwise than by slaughter. In addition to the ways already provided, sausage shall be deemed to be adulterated if it is composed in any part of liver, lungs, kidneys or other viscera of animals: Provided, that the use of animal intestines as sausage casings shall not be deemed to be an adulteration.

Seventh. If it differs in strength, quality or purity from the standards of purity of food products that have been or may be from time to time adopted by the board of agriculture.

(7) The term "misbranded" as used herein shall apply to all drugs, or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design or device regarding such article, or the ingredients or substance contained therein, which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the state, territory or country in which it is manufactured or produced.

For the purpose of this act an article shall also be deemed to be misbranded:

In the case of drugs:

First. If it be an imitation of, or offered for sale under the name of, another article.

Second. If the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package, or if the package fails to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis, indica, chloral hydrate, or acetanilide, or any derivative or preparation of any such substances contained therein: Provided, that this shall not apply to prescriptions of regularly licensed physicians, dentists and veterinary surgeons, United States Pharmacopoeia and National Formulary preparations.

In the case of food:

First. If it be an imitation of, or offered for sale under the distinctive name of, another article.

Second. If it be labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in whole or in part, and other contents shall have been placed in such package, or if it fail to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any such substances contained therein. That all cans, jars, or other packages containing canned meats intended for food, shall have printed on the label thereof the correct date on which said food product was canned or put into said package, as provided in the National Pure Food Law.

Third. If in package form, and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package.

Fourth. If the package containing it or its label shall bear any statement, design or device regarding the ingredients or the substances contained therein, which statement, design or device shall be false or misleading in any particular: Provided, that an article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded in the following cases:

First. In the case of mixtures or compounds which may be now or from time to time hereafter known as articles of food under their own distinctive names, and not an imitation of, or offered for sale under the distinctive name of, another article, if the name be accompanied on the same label or brand with a statement of the place and where said article has been manufactured or produced.

Second. In the case of articles labeled, branded or tagged so as to plainly indicate that they are compounds, imitations or blends, and the word "compound," "imitation," or "blend," as the case may be, is plainly stated on the package in which it is offered for sale: Provided, the labeling is according to the rules prescribed by the board of agriculture: Provided, that the term "blend" as used herein shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring and flavoring only: And provided further, that nothing in this act shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredient to disclose their trade formulas, except in so far as the provisions of this act may require to secure freedom from adulteration or misbranding.

(8) It shall be unlawful for any person or persons, firm or corporation, to sell, or to have in his or their possession to sell for human food, the carcass or parts of carcass of any animal which has been slaughtered, prepared or kept under unsanitary conditions; and unsanitary conditions shall legally exist wherever and whenever any one or more of the following conditions appear or are found, to-wit: If the slaughter-house is dilapidated and in a state of decay; if the drainage of the slaughter-house or slaughter-house yard is not efficient; if maggots or filthy pools or hog-wallows exist in the slaughter-house yard or under the slaughter-house; if the water supply is not pure and unpolluted; if hogs are kept in the slaughter-house yard, or fed therein on animal offal, or if the odors of putrefaction plainly exist therein, or if kept in unclean, bad-smelling refrigerators, or if kept in unclean or bad-smelling storage-rooms.

All peace and health officers shall have the power and are commanded to seize any animal carcass or parts of carcasses which are intended for sale or offered for sale for human food which have been

slaughtered and prepared, handled or kept under unsanitary conditions as herein defined, and shall deliver the same forthwith to and before the nearest police judge or justice of the peace, together with all information obtained, and said police judge or said justice of the peace shall, upon sworn complaint being filed, issue warrants of arrest for all persons who have violated the provisions of this section, and proceed to try the case. Any person, persons, firm or corporation found guilty of violating the provisions of this section shall be fined not less than ten nor more than one hundred dollars, and the meat in question shall be destroyed.

(9) No dealer shall be prosecuted under the provisions of this act when he can establish a guaranty signed by the wholesaler, jobber, manufacturer or other party, residing in North Carolina, from whom he purchases such articles, to the effect that the same is not adulterated or misbranded within the meaning of this act, designating it. Said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of such articles to such dealer, and in such cases said party or parties shall be amenable to the prosecutions, fines and other penalties which would attach, in due course, to the dealer under the provisions of this act: Provided, that the above guaranty shall not afford protection to any dealer after the first offense in connection with a product from a particular wholesaler, jobber or manufacturer.

(10) The board of agriculture shall, from time to time, fix and publish standards or limits of variability permissible in any article of food, drugs, confectionery, or liquors, and the North Carolina board of pharmacy shall, from time to time, fix and publish standards or limits of variability permissible in any article of drugs, and these standards, when so published, shall be the standards before the courts: Provided, that when standards have been or may be fixed by the secretary of agriculture of the United States, they shall be accepted by the board of agriculture, and published as the standards of North Carolina: Provided, that these standards shall not apply to the United States Pharmacopoeia and National Formulary preparations. The board of agriculture shall have authority to make uniform rules and regulations for carrying out the provisions of this act, and in the appointment of a drug inspector under the provisions of this act, they shall confer with the North Carolina board of pharmacy.

(11) Every person who offers for sale or delivers to a purchaser any foods, drugs, confectionery or liquors, shall furnish within business hours and upon tender and full payment of the selling price, a sample of such foods, drugs, confectionery or liquors to any person duly authorized by the board of agriculture to secure the same, and who shall apply to such manufacturer or vendor or person delivering to a purchaser, food, drugs, confectionery or liquors, for such sample for such use in sufficient quantity for the analysis of such article or articles in his possession.

(12) Any manufacturer or dealer who refuses to comply, upon demand, with the requirements of section (11) eleven of this act, or any manufacturer, dealer or person who shall impede, obstruct, hinder or otherwise prevent, or attempt to prevent, any chemist, inspector or other person in the performance of his duty in connection with this act, shall be guilty of a misdemeanor, and upon conviction be fined not less than ten dollars nor more than one hundred dollars, or be imprisoned, in the discretion of the court; and said fines, less the legal costs, shall be paid into the treasury of the state for the benefit of the department of agriculture, to be used exclusively in executing the provisions of this act.

(13) The word "person" as used in this act shall be construed to import both the plural and the singular, as the case demands, and shall

include corporations, companies, societies and associations. When construing and enforcing the provisions of this act, the act, omission or failure of any officer, agent or other person acting for or employed by any corporation, company, society or association within the scope of his employment or office, shall in every case be also deemed to be the act, omission or failure of such corporation, company, society or association, as well as that of the person.

(14) Any person, firm or corporation who shall manufacture, sell or offer for sale any article of food, drug or liquor that is adulterated or misbranded within the meaning of this act, shall be guilty of a misdemeanor; and in addition to being subject to the penalties already provided in this act, the article of food, drug or liquor shall be subject to seizure, condemnation and sale by the commissioner of agriculture, as is provided for the seizure, condemnation and sale of commercial fertilizers; and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the treasury for the use of the department of agriculture in executing the provisions of this act; but no article or articles shall be sold in any jurisdiction contrary to the provisions of this act, or the laws of that jurisdiction: Provided, that the commissioner of agriculture shall have authority for the first offense to allow the shipment of such article or articles without the borders of the state.

(15) The provisions of this act shall not apply to drugs or articles of food on hand at the passage of this act.

(16) All laws in conflict with this act are hereby repealed.

(17) Except as provided in section fifteen, this act shall be in force from and after July the first, one thousand nine hundred and seven.

Ratified February 25, 1907.—Laws 1907, c. 368.

Note.—The provisions of sections 3444, 3445 and 3452 of the Revisal of 1905 are not expressly repealed by chapter 368 of Laws of 1907.

394. Narcotics; sale of, regulated.—It shall be unlawful for any person, firm or corporation to sell, furnish or give away any cocaine, alpha or beta eucaine, opium, morphine, heroin, or any salt or compound of any of the foregoing substances, or any preparation or compound containing any of the foregoing substances, or their salts or compounds, except upon the original written order or prescription of a lawfully authorized practitioner of medicine, dentistry, or veterinary medicine, which order or prescription shall be dated and shall contain the name of the person for whom prescribed, or, if ordered by a practitioner of veterinary medicine, shall state the kind of animal for which ordered, and shall be signed by the person giving the prescription or order. Such written order or prescription shall be permanently retained on file by the person, firm or corporation who shall compound or dispense the article ordered or prescribed, and it shall not be again compounded or dispensed, except upon the written order of the original prescriber for each and every subsequent compounding or dispensing. No copy or duplicate of such written order or prescription shall be made or delivered to any person, but the original, shall at all times be open to the inspection of the prescriber and properly authorized officers of the law: Provided, however, that the above provisions shall not apply to preparations containing not more than two grains of opium or not more than one-fourth grain of morphine, or not more than one-fourth grain of heroin, or not more than one-eighth grain of cocaine, or not more than one-eighth grain of alpha or beta eucaine, in one fluid ounce, or, if a solid preparation, in one avoirdupois ounce: Provided, also, that the above provisions shall not apply to preparations containing opium and recommended and sold in good faith for diarrhoea and cholera, each bottle or package of which is accompanied by specific directions for use, and a caution against habitual use; nor to powder of ipecac and opium, commonly known as "Dover's Powder"; nor to liniments nor ointments when plainly labeled "For external use only":

And provided further, that the above provision shall not apply to sales at wholesale by jobbers, wholesalers and manufacturers, to retail druggists or qualified physicians, or to each other, nor to sales at retail by retail druggists to regular practitioners of medicine, dentistry or veterinary medicine, nor to sales at retail by retail druggists to habitues personally known as such to the sellers, nor to sales made to manufacturers of proprietary or pharmaceutical preparations for use in the manufacture of such preparations, nor to sales to hospitals, colleges, scientific or public institutions.

It shall be unlawful for any practitioner of medicine, dentistry or veterinary medicine to furnish or to prescribe for the use of any habitual user of the same any cocaine, heroin, alpha beta or eucaine, opium, morphine, or any salt or compound of any of the foregoing substances or their salts or compounds. And it shall also be unlawful for any practitioner of dentistry to prescribe any of the foregoing substances for any person not under his treatment in the regular practice of his profession, or for any practitioner of veterinary medicine to prescribe any of the foregoing substances for the use of any human being: Provided, however, that the provisions of this section shall not be construed to prevent any lawfully authorized practitioner of medicine from furnishing or prescribing in good faith for the use of any habitual user of narcotic drugs who is under his professional care such substances as he may deem necessary for their treatment when such prescriptions are not given or substances furnished for the purpose of evading the provisions of this act.

Any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction for the first offense shall be fined not less than twenty-five dollars nor more than fifty dollars, and upon conviction for a second offense shall be fined not less than fifty dollars nor more than one hundred dollars, and upon conviction for a third offense shall be fined not less than one hundred dollars nor more than two hundred dollars, and may be imprisoned in the county jail for not more than six months; and if a licensed pharmacist, physician, dentist or veterinary surgeon, his license shall be revoked. It shall be the duty under this act of all judges of the superior courts in this state, at every regular term thereof, to charge all regularly impaneled grand juries to diligently inquire into and investigate all cases of the violation of the provisions of this act, and to make a true presentment of all persons guilty of such violations. It shall be the duty of the board of pharmacy to cause the prosecution of all persons violating the provisions of this act. No prosecution shall be brought for the sale of any patent or proprietary medicine containing any of the drugs or preparations hereinbefore mentioned until the board of pharmacy shall certify that such medicine contains any of the said drugs or preparations in excess of the maximum percentage hereinbefore mentioned.

In any proceedings under the provisions of this act the charge may be brought against any or all of the members of a partnership, or against the directors or executive officers of a corporation, or against the agent or employees of any person, partnership or corporation.—Laws 1907, c. 77.

395. Nuisance, failure to abate.—If any person, after having received a notification in writing from the county superintendent of health of any nuisance on the premises occupied by him, or any unoccupied premises belonging to him which is dangerous to public health, shall fail to abate the same for twenty-four hours after such notice is received, he shall be guilty of a misdemeanor and shall be fined one dollar a day so long as said nuisance remains.—Rev., 3446.

396. Obstructing inspector in performance of duty.—If any manufacturer or dealer shall impede, obstruct, hinder, or otherwise interfere

with any inspector or chemist or other person, in the performance of his duty in the securing of samples, or the analysis of samples of articles of condiments, beverages, or foods sold or offered or exposed for sale in this state, as required by law, he shall be guilty of a misdemeanor and be fined not exceeding one hundred dollars, or be imprisoned not exceeding one hundred days, or both.—Rev., 3447.

397. Physician and county superintendent to give notice of contagious diseases.—If a physician knows that a person whom he is called to visit is infected with smallpox, diphtheria, scarlet fever, typhus fever, yellow fever or cholera, he shall immediately give notice thereof to the health officer or mayor, if the sick person be in a city or incorporated town, otherwise to the county superintendent of health; and if he refuses or neglects to give such notice of it in twenty-four hours, he shall be guilty of a misdemeanor, and shall be fined for each offense not less than ten nor more than twenty-five dollars. And it shall be the duty of the said county superintendent, health officer or mayor receiving such notice of the presence of a case of smallpox, yellow fever, typhus fever, or cholera within his jurisdiction to communicate the same immediately by mail or telegraph to the secretary of the state board of health. A failure to perform this duty for twenty-four hours after the receipt of the notice shall be deemed a misdemeanor and fined not less than ten nor more than twenty-five dollars.—Rev., 3448.

398. Quarantine regulations.—If any person shall neglect or refuse to comply with or in any way violate the rules promulgated by the county superintendent of health on the subjects of quarantine and disinfection, he shall be deemed guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court, not less than five nor more than fifty dollars, or imprisoned not less than ten nor more than thirty days. In case the offender be stricken with the disease for which he is quarantinable, he shall be subject to the penalty on recovery, unless in the opinion of the superintendent it should be omitted.—Rev., 3449.

399. Quarantine regulations, Cape Fear river.—If any person shall violate any of the rules and regulations made by the quarantine board for the control, government and maintenance of the quarantine station on Cape Fear river, he shall be guilty of a misdemeanor.—Rev., 3450.

400. Quarantine regulations; vessels.—If any vessel shall come into the state from any place which at the time of her departure was infected with any infectious disease, or if such vessel shall have on board, or shall have had on board during her passage, any infectious disease, and shall come to any town, or into its harbor, without permission obtained as required by law, the pilot or master conducting the vessel, or ordering or permitting her to be conducted to such town or harbor, shall be guilty of a misdemeanor, and fined not less than one thousand dollars, and imprisoned not exceeding one year.—Rev., 3451.

402. Rules of sanitary committee.—If any person shall violate the rules and regulations made by the county sanitary committee, he shall be guilty of a misdemeanor and fined not exceeding fifty dollars, or imprisoned not exceeding thirty days.—Rev., 3453.

403. Travelers coming from infected places.—The board of health, or in case there is no board of health, the board of aldermen or town commissioners of a city or town, or the sanitary committee of a county, near to or bordering upon either of the neighboring states, may appoint, by writing, suitable persons to attend at places by which travelers may pass from infected places in other states, who may examine such travelers as may be suspected of bringing any infection dangerous to the public health, and if it need be may restrain them from traveling until licensed thereto by the board of health or board of aldermen or

town commissioners of the city or town to which they may come. A traveler coming from such infected place who, without such license, travels within this state (except to return by the most direct route to the state whence he came), after he has been cautioned to depart by the persons so appointed, shall be isolated or ejected, at the discretion of the local city or town board of health, or county sanitary committee; and upon refusal to comply with the regulations of the said boards of health, or either of them, on this subject, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five nor more than fifty dollars, or imprisoned not more than thirty days.—Rev., 3454.

404. Vaccination, rules in regard to.—If any person shall violate any of the rules and regulations of the sanitary authorities of any county in regard to vaccination, he shall be guilty of a misdemeanor and fined not exceeding fifty dollars or imprisoned not exceeding thirty days.—Rev., 3455.

405. Water supply, damage to.—If any person shall wilfully put into the well, spring or cistern of water of any other person any substance or thing whereby such well, spring or cistern may be endamaged, or the water thereof be made less wholesome or fit for use, he shall be guilty of a misdemeanor.—Rev., 3456.

406. Water supply, damage to.—If any person shall wilfully or maliciously defile, corrupt or make impure any well, spring or other source of water supply, or reservoir, or destroy or injure any pipe, conductor of water or other property pertaining to an aqueduct, or shall aid and abet therein, he shall be guilty of a misdemeanor.—Rev., 3457.

407. Water supply of public institutions.—If any person shall in any way intentionally or maliciously damage or obstruct any water line of any public institution, or in any way contaminate or render the water impure or injurious, he shall be guilty of a misdemeanor, and shall be fined or imprisoned in the discretion of the court.—Rev., 3458.

Note.—For watersheds, see ss. 829-834.

CHAPTER XVIII.

HUNTING.

408. Before daylight and after sunset.—If any person shall hunt or shoot any wild fowl, or game bird, on any day after the hour of sunset, or before the hour of daylight, or shall use any gun other than can be fired from the shoulder, or shall hunt or shoot wild fowl, birds or game of any kind on Sunday, he shall be guilty of a misdemeanor: Provided, that wild fowl may be hunted after sunset and before daylight and by firelight in that part of Bogue sound in Carteret county west of Sally Bell's shoal.—Rev., 3459.

409. Chasing deer with dogs, certain counties.—If any person shall chase deer with dogs in Clay, Graham, Macon or Swain counties, he shall be guilty of a misdemeanor.—Rev., 3460.

410. Currituck sound.—If any person shall use more than one "bush blind," either afloat or stationary, in that portion of Currituck sound south of a line beginning at E. W. Baum's landing, thence east a straight course to Whale's Head light-house, and north of a line extending from the wharf at Poplar branch; thence east to Currituck Club lands; or shall before or after they have put decoys in the waters of Currituck sound, sail or propel a boat in any way in the above-described territory for the purpose of picking up or forcing game of

any kind on the wing, except by the use of oars or poles, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding fifty dollars or be imprisoned not exceeding thirty days.—Rev., 3461.

411. Deer by firelight; evidence of accomplices.—If any person shall hunt for deer with a gun in the woods in the night time, by firelight, or shall kill or catch any wild deer while swimming streams or other bodies of water, the person so offending shall be guilty of a misdemeanor, and shall pay a fine not exceeding fifty dollars, or be imprisoned not exceeding thirty days. When more persons than one are engaged in committing the offense of fire-hunting, any one may be compelled to give evidence against all others concerned; and the witness, upon giving such information, shall be acquitted and held discharged from all penalties and pains to which he was subject by his participation in the offense. This section shall not apply to Currituck county.—Rev., 3462.

412. Deer in Brunswick.—If any person shall kill by shooting or drowning or knocking in the head any deer while swimming in any waters of Brunswick county, he shall be guilty of a misdemeanor, and be fined not less than five nor more than twenty dollars.—Rev., 3463.

413. Deer in McDowell.—Protected for ten years from 1907.—See 1907, c. 108.

414. Destroying nests or eggs of birds.—If any person shall take or needlessly destroy the nest or eggs of any wild birds, except those of the English or European house-sparrow, owls, hawks, crows, blackbirds, jackdaws and rice birds, he shall be guilty of a misdemeanor, and be fined one dollar for each nest or egg destroyed or taken, or be imprisoned not less than five nor more than ten days for each offense. This section shall not apply to any person taking eggs or nests for scientific purposes only, by authority of the Audubon Society of North Carolina.—Rev., 3464.

415. Evidence of illegal hunting, New Hanover.—If any person shall offer for sale on the market, in New Hanover county, any quail, wild turkeys or ducks between the first day of March and the first day of September, it shall be prima facie evidence of his having killed such game out of season.—Rev., 3465.

416. Killing game out of season.—If any person shall at any time hunt, capture or kill any nongame bird, or shall during the close season, or time in each year in which the hunting or killing is prohibited, chase with dogs, hunt, kill, or wound, or in any manner take or capture any game bird, or any deer, opossum, rabbit or squirrel, he shall be guilty of a misdemeanor, and be fined not more than fifty dollars or imprisoned not exceeding thirty days: Provided, this section shall not apply to birds caught or killed by authority of the Audubon Society for scientific purposes only. This section shall not apply to the English or European housesparrow, owls, hawks, crows, blackbirds, jackdaws, and rice birds.—Rev., 3466.

Note.—For close season, see chapter Hunting.

The punishment for violation of this section was changed by the general assembly of 1905, as follows:

Hunting deer in **Granville**, Person and Vance counties is punishable in the discretion of the court, 1905, c. 47.

Deer, squirrel, quail or partridges in Pamlico county, by a fine not exceeding twenty-five dollars, or imprisonment not exceeding ten days, or both, in the discretion of the court, 1905, c. 99.

Deer and wild turkey in Richmond county, by a fine of not less than five dollars nor more than ten dollars, 1905, c. 101.

In Halifax and Warren counties, by a fine of ten dollars, 1905, c. 137.

Squirrel in Montgomery and Pender counties, by a fine of not more than twenty-five dollars, 1905, c. 284.

Any game bird in Granville county, by a fine of five dollars for each bird, 1905, c. 369.

Quail or partridges in Alexander county, in the discretion of the court, 1905, c. 377.

Quail, partridges or pheasants in Swain county, in the discretion of the court, 1905, c. 385.
Deer in Carteret county, by a fine of not less than ten dollars nor more than fifty, 1905, c. 387.

Deer in Bladen county, by a fine of ten dollars or imprisonment for ten days, 1905, c. 398.
Any game bird or deer in New Hanover county, by a fine of not less than five dollars nor more than twenty dollars, 1905, c. 409.

In Brunswick any game bird or deer, by a fine of not less than five dollars nor more than twenty-five dollars, 1905, c. 413.

Jones and Craven, as to woodcock, by a fine of ten dollars or ten days imprisonment, 1905, c. 183.

Pamlico county, 1905, c. 99.

Cove Creek township, Watauga county, in the discretion of the court, 1905, c. 309.

Lanesboro township, Anson county, a fine of not less than five and not more than fifty dollars, 1905, c. 389.

See also Laws 1907 for sundry local acts.

417. Muskrats or minks, by whom.—If any person who has not resided within the state two years shall hunt or trap otters, muskrats or minks, or shall sell the hides or skins from these animals in or out of the state, he shall be guilty of a misdemeanor, and shall for each offense be fined not less than thirty dollars nor more than fifty dollars.—Rev., 3467.

418. Netting quail in certain counties.—If any person shall net or trap any quail or partridge in Burke, Madison, Randolph, Richmond or Stokes counties, except on his own land, he shall be guilty of a misdemeanor, and be fined not exceeding fifty dollars, or imprisoned not exceeding thirty days.—Rev., 3468.

419. Nonresidents hunting without license.—If any nonresident shall hunt in the state without license, as required by law, or shall hunt upon the lands of another without his written consent, or shall fail to carry his license with him in hunting, or shall fail upon demand to exhibit it to any game warden or police officer, he shall be guilty of a misdemeanor. Each day's hunting without license shall be a separate offense.—Rev., 3469.

420. Packages of game to be marked.—If any person shall deliver or knowingly receive for transportation any receptacle or package containing birds or game, unless the same shall be labeled on the address side in plain letters with the name and address of the owner and consignor, and with the kind or kinds of birds which the said package or receptacle contains, or shall falsely label the same, he shall be guilty of a misdemeanor.—Rev., 3470.

421. Shipping certain birds.—If any person shall knowingly receive for transportation, or shall transport or cause to be transported, or have in his possession with the intent to transport, or to secure the transportation of, or shall in any manner carry or convey, beyond the limits of this state, except for purposes of propagation under permits issued by the Audubon Society of North Carolina, any partridge, pheasant, grouse, shore or beach birds, quail, wild turkey, snipe, woodcock, or nongame bird which have been killed or captured within this state, he shall be guilty of a misdemeanor; and each bird so killed or taken or had in possession, received for transportation or transported contrary to the provisions of this section, shall constitute a separate offense. The reception by any person or corporation within this state of any such birds or game for shipment to a point beyond the limits of this state, shall be prima facie evidence that said birds or game were killed within the state for the purpose of conveying same beyond its limits; but the provisions of this section shall not apply to the common carriers into whose possession any of the birds mentioned in this section shall come in the regular course of their business for transportation while they are in transit through the state from any place without the state.—Rev., 3471.

422. Shipping or selling birds in certain counties.—If any person shall sell or offer for sale, or have in his possession any quail in

Forsyth county, during the close season; or shall sell, or offer to sell, or in any way dispose of any quail in Catawba, Iredell or Alexander counties, which were not killed by hunting and shooting during the open season in those counties; or shall sell or offer for sale, or have in his possession for sale in Buncombe county, any quail, partridge, pheasant, grouse, wild turkey or dove killed in said county, except during the open season, or shall in said county kill more than twenty-five of such birds in one day; or shall sell, offer to sell or buy any pheasant during the close season in Randolph county, unless such pheasant shall have been propagated in an enclosure and killed for his private use; or shall ship or transport or convey any quail or partridge out of Surry, Catawba or Iredell counties, or any live quail or partridge out of Swain county; or shall take or destroy any quail or partridge in Catawba or Iredell counties, except by hunting and shooting during the open season, on his own land, he shall be guilty of a misdemeanor. The violation of this section shall be punished as follows: Buncombe and Forsyth counties, by a fine not exceeding fifty dollars, or imprisonment not exceeding thirty days; Catawba, Iredell, Swain, Alexander and Surry counties in the discretion of the court.—Rev., 3472; Laws 1907, c. 626.

423. Wild fowl, Carteret county.—If any person shall hunt or shoot wild fowl by firelight after the hour of sunset and before the hour of sunrise in Carteret county, except in that part of Bogue sound west of Sally Bell shoal, or use for such shooting any other gun than one that can be fired from the shoulder; or if any person shall hunt or shoot wild fowl in Carteret county with or from batteries or sneak boats from the first day of April to the first day of December of any year; or if any person shall hunt wild fowl with batteries or sneak boats, or shoot them therefrom in that part of Bogue sound, Carteret county, west of Sally Bell shoal, at any season, he shall be guilty of a misdemeanor, and be fined not less than ten nor more than fifty dollars.—Rev., 3473.

424. Wild fowl, Currituck county.—If any person shall put bushes or blinds of any kind on their boats or floats of any kind with intent to decoy or pursue ducks, or shall, after putting out decoys, sail, row, or in any manner propel a boat after wild fowl to put them on the wing, or shoot them with rifle or shotgun from any boat while sailing, or shall place any sail, flag, or other device upon any land bordering on the water to frighten any wild fowl, or shall leave more than one stationary bush or blind standing in the water between the hours of dark and sunrise, or shall fail to anchor any decked boat or float-house, or house built over the water and used to live in for the purpose of fishing or hunting wild fowl, in shoal water not more than three hundred yards from the mainland on the west side of Currituck sound, or at some public landing on the east side between the north end of Church's island and the south end of Powell's point at dark, or shall at dark fail to go to some landing as aforesaid, or shall leave any landing or anchorage before sunrise in the morning for the purpose of hunting or fishing, or shall before sunrise put out any decoys of any kind, or nets, or shall continue to hunt or fish after dark, or shall, between the thirty-first day of March and the tenth day of November of any year, shoot or capture any wild fowl over decoys, or shall between the tenth day of November of any year and the thirty-first day of March of the next year on any Wednesday, Saturday or Sunday hunt, take, kill or capture any wild fowl, or on any of said days shall disturb or rout any raft of wild fowl unless the same be unavoidable in the usual course of navigation, or shall between the tenth day of November and the fifteenth day of February skiff or ring-shoot any boobies or ruddy duck, or shall between the thirty-first day of March and the tenth day of November ship out of the county any wild fowl, or shall sail or propel

a boat on Sunday for the purpose of locating wild fowl, or if any hired or employed person shall sail or lay around anywhere near any citizen who may be gunning or fishing to damage his shooting or keep him from shooting, he shall be guilty of a misdemeanor. This section shall only apply to Currituck county.—Rev., 3474.

425. Hunting wild fowl in Dare county without license.—If any non-resident shall hunt wild fowl in Dare county without having paid the license tax required by law, or if any person shall hunt wild fowl in said county in any manner not authorized by law, he shall be guilty of a misdemeanor.—Rev., 3475.

426. Wild fowl in Dare county.—If any non-resident of this state shall shoot wild fowl from any boat or floating battery in the waters of that part of Dare county which lies south of a line passing east and west through the extreme northern end of Roanoke island, unless within four miles of some clubhouse or lodge of which he is a member or guest, or from some licensed boat or battery from which non-residents are by law authorized to shoot wild fowl, he shall be guilty of a misdemeanor.—Rev., 3476.

427. Wild fowl in New Hanover and Brunswick counties.—If any person shall kill, for sale, any wild fowl in the waters of Dare, New Hanover or Brunswick counties between the tenth days of March and November of any year, or ship out of the state between said dates any wild fowl killed in the waters aforesaid, or if any non-resident shall in said counties, or in Currituck county, shoot any wild fowl from any blind, box or battery or float, not on land at the time, he shall be guilty of a misdemeanor and be fined not more than fifty dollars, or imprisoned not more than thirty days.—Rev., 3477.

428. Wild fowl in Pamlico sound, Hyde county.—If any person shall shoot any wild fowl in the waters of Pamlico sound, in Hyde county, from any box, battery or float not on land at the time, he shall be guilty of a misdemeanor: Provided, residents of the state may shoot from batteries not on land on Monday, Tuesday, Thursday and Friday of each week and on no other days.—Rev., 3478.

429. Wild fowl with fire.—If any person shall hunt wild fowl, or game birds of any kind, with fire, he shall be guilty of a misdemeanor, and upon conviction be fined not less than twenty and not more than fifty dollars, or imprisoned not less than ten days and not more than thirty days.—Rev., 3479.

430. Without written permission.—If any person shall, without having first obtained permission of the owner, hunt with gun or dogs on the land of another, or if he shall fish or attempt to catch fish from said lands, after being forbidden, he shall be guilty of a misdemeanor, and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days.—Rev., 3480.

Note.—For substitute applicable only to Jackson county, see Laws 1907, c. 763.

431. Without written permission.—If any person shall hunt with dog or gun upon the lands of another without the written consent of the owner of the lands, he shall be guilty of a misdemeanor. This section shall apply only to the counties of Hertford, Rowan, Wayne, Madison, Montgomery, Currituck, Nash, Yadkin, Robeson, Craven, Jones, Bock Creek township, Randolph county; Mineral Springs and Wolfpit township, Richmond county; Rutherford township, Rutherford county; Morehead City township, Carteret county; Goose Nest, Poplar Point and Hamilton townships, Martin county; and to hunting quail or partridge in Franklinville township, Randolph county, and in Columbia township, Randolph county, within the following boundary lines, to-wit, from junction of Columbia and Franklinville townships on Franklinville and Siler City public road; thence north with the line dividing

Franklinville and Columbia township line to Liberty township line; thence east with line dividing Columbia and Liberty townships to Ramseur and Liberty public road; thence south with Liberty and Ramseur public road to Franklinville road at Ramseur academy; thence with said road to the beginning. There shall be no hunting at all except in the month of December of each year in Madison county, and in Martin county consent may be given by the authorized agent. This section shall not apply to fox hunting in Wayne county, or to fox hunting with three or more dogs in Nash county, or to the hunting of wolves, bears, foxes and wildcats in Madison county, or to the hunting by tenants on the lands of their landlords in Martin county. The punishment for the violation of this section shall, as to the several places to which it applies, be as follows: In Hertford and Rowan counties, by a fine of not less than five dollars nor more than twenty-five dollars, or imprisonment not more than thirty days; in Wayne county, by a fine of not less than five dollars nor more than ten dollars for each offense; in Madison county, by a fine of not less than five dollars nor more than twenty-five dollars, or imprisonment not less than five nor more than twenty days; in Montgomery county, by a fine not less than ten dollars nor more than fifty dollars, or imprisonment not to exceed thirty days; in Currituck county, by a fine not exceeding ten dollars, or imprisonment not exceeding ten days; in Nash county, by a fine of not less than five dollars nor more than twenty-five dollars; in Robeson and Yadkin counties, by a fine not less than five dollars nor more than ten dollars; in Craven and Jones counties, by a fine of not less than five dollars nor more than twenty-five dollars, or imprisonment not exceeding thirty days; in Randolph county, by a fine of not less than five dollars, or imprisonment not exceeding thirty days; in Richmond county, by a fine not less than five dollars nor more than fifty dollars, or imprisonment not exceeding twenty days; in Rutherford county, by a fine of five dollars; in Martin county, by a fine not to exceed ten dollars, or imprisonment not to exceed ten days; in Randolph county, by a fine not exceeding five dollars, or imprisonment not exceeding ten days; in Craven and Jones counties, prosecution can be maintained only upon complaint of the landowner.—Rev., 3481; Laws, 1907, c. 747.

CHAPTER XIX.

INSURANCE.

432. Adjuster acting for unauthorized company.—If any person shall act as adjuster on a contract made otherwise than authorized by the laws of this state, or by any insurance company or person not regularly licensed to do business in the state, or shall adjust or aid in the adjustment, either directly or indirectly, of a loss by fire on property located in this state, incurred on a contract not authorized by the laws of the state, he shall be deemed guilty of a misdemeanor, and shall upon conviction be fined not less than two hundred dollars nor more than five hundred dollars, or imprisoned not less than six months nor more than two years, or both, in the discretion of the court.—Rev., 3482.

434. Agent procuring insurance in unauthorized company, and failing to file statement and affidavit.—If any person licensed to procure insurance in an unauthorized foreign company shall procure, or act in any manner in the procurement or negotiation of insurance in any unauthorized foreign company, and shall neglect to make and file the affidavit and statements required by law, he shall forfeit his license

and be punished by a fine of not less than one hundred nor more than five hundred dollars, or by imprisonment for not more than one year, or by both.—Rev., 3483.

435. Agent acting without license.—If any person shall assume to act as an insurance agent or insurance broker without license therefor as required by law, or shall act in any manner in the negotiation or transaction of unlawful insurance with a foreign insurance company not admitted to do business in this state, or as principal or agent shall violate any provision of the law in regard to the negotiation or effecting of contracts of insurance, he shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred nor more than five hundred dollars for each offense.—Rev., 3484.

436. Agent to exhibit license.—If any agent of any insurance company shall, on demand of any person from whom he shall solicit insurance, fail to exhibit a certificate from the insurance commissioner bearing the seal of his office, and dated within one year from such demand, he shall be fined five dollars or imprisoned ten days for each offense.—Rev., 3485.

437. Agent obtaining premiums by false representations.—If any insurance agent or broker knowingly procures by fraudulent representations payment, or the obligation for the payment, of a premium of insurance, he shall be punished by a fine of not less than one hundred nor more than five hundred dollars, or be imprisoned for not more than one year.—Rev., 3486.

438. Agents, etc., making false statements.—If any solicitor, agent, examining physician or other person shall knowingly or wilfully make any false or fraudulent statement or representation in or with reference to any publication for insurance, or shall make any such statement for the purpose of obtaining fee, commission, money or benefit in any corporation transacting business in this state, he shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment in the county jail for not less than thirty days nor more than one year, or both, at the discretion of the court; and if any person shall wilfully make a false statement of any material fact or thing in a sworn statement as to the death or disability of a policy or certificate holder in any such corporation, for the purpose of procuring payment of a benefit named in the certificate of such holder, he shall be guilty of perjury.—Rev., 3487.

439. Agents signing certain blank policies.—If any agent, commissioned or otherwise, of any steam-boiler, liability, accident, plate-glass, or fidelity insurance company shall sign any blank contract or policy of insurance, upon conviction thereof he shall be fined for each offense not less than one hundred dollars nor more than two hundred dollars.—Rev., 3488.

440. Agent guilty of larceny.—If any insurance agent or broker who acts in negotiating a contract of insurance by an insurance company lawfully doing business in this state embezzles or fraudulently converts to his own use, or, with intent to use or embezzle, takes, secretes, or otherwise disposes of, or fraudulently withholds, appropriates, lends, invests, or otherwise uses or applies any money or substitute for money received by him as such agent or broker, contrary to the instructions or without the consent of the company for or on account of which the same was received by him, he shall be deemed guilty of larceny.—Rev., 3489.

441. Agent violating insurance law.—If any person, either as principal or agent, or pretending to be such, shall solicit, examine or inspect any risk, or shall examine into, adjust, or aid in adjusting any

loss, or shall receive, collect or transmit any premium of insurance, or shall do any other act in the soliciting, making or executing any contract of insurance of any kind otherwise than the law permits, he shall be deemed guilty of a misdemeanor, and on conviction shall pay a fine of not less than two hundred dollars nor more than five hundred dollars, or be imprisoned not less than one nor more than two years, or both, at the discretion of the court.—Rev., 3490.

442. Agent's compensation, unlawful restriction of.—It shall be unlawful for any fire insurance company, association or partnership doing business in this state employing an agent who is employed by another fire insurance company, association or partnership, either directly or through any organization or association, to enter into, make or maintain any stipulation or agreement in restraint of or limiting the compensation which said agent may receive from any other fire insurance company, association or partnership. The penalty for any violation of this section shall be a fine of not less than two hundred and fifty dollars nor more than five hundred dollars and the forfeiture of license to do business in this state for a period of twelve months thereafter.—Rev., 3491.

443. Company advertising assets without liabilities.—If any company or any agent thereof issues or circulates advertisements in which any such company publishes its assets and does not in the same connection and with equal conspicuousness publish its liabilities computed on the basis allowed for its annual statements, or any publication purporting to show its capital which exhibits more than the amount of such capital as has been actually paid in cash, it or he shall be punished by a fine of not less than fifty nor more than two hundred dollars.—Rev., 3492.

444. Company making false statement.—If any insurance company in its annual or other statement required by law shall wilfully misstate the facts, the insurance company and the person making oath to or subscribing the same shall severally be punished by a fine of not less than five hundred nor more than one thousand dollars. Any person making oath to such false statement shall be guilty of the crime of perjury.—Rev., 3493.

445. Failure to exhibit books on demand.—If any person having in his possession or control any books, accounts or papers of any person licensed under the insurance law shall, on demand, refuse to exhibit the same to the insurance commissioner, or shall knowingly or wilfully make any false statement in regard to the same, such person shall be deemed guilty of a misdemeanor, and, upon conviction thereof shall be fined or imprisoned, or both, at the discretion of the court.—Rev., 3494.

446. Fire company reinsuring in unauthorized company.—If any fire insurance company shall, directly or indirectly, reinsure any risk taken by it on any property located in North Carolina in any company not duly authorized to transact business herein, the insurance agent and the company effecting or acting in the negotiation of such reinsurance shall severally be punished by a fine of five hundred dollars.—Rev., 3495.

447. Mutual fire, guaranteeing against assessments.—If any director or other officer of a mutual fire insurance company, either officially or privately, shall give a guarantee to a policy-holder thereof against an assessment to which such policy-holder would otherwise be liable, he shall be punished by a fine not exceeding one hundred dollars for each offense.—Rev., 3496.

447a. Form of policy for less than \$500 to be approved.—It shall be unlawful for any insurance company, association or order or society doing business in this state, after the first day of July, one thousand nine hundred and seven, to issue, sell or dispose of any policy, contract

or certificate for less than five hundred dollars (\$500), or use applications in connection therewith, until the forms of which have been submitted to and approved by the insurance commissioner of North Carolina, and copies filed in the insurance department.—Laws 1907, c. 879.

448. Reinsurance; medical examination.—If any domestic life insurance company shall reinsure its risks, except by permission of the insurance commissioner, exceeding one-half of any individual risk, or if any life insurance company organized under the laws of, or doing business in, this state, shall enter into any contract of insurance upon lives within this state without having previously made or caused to be made a prescribed medical examination of the insured by a registered medical practitioner, such insurance company, or any officer, agent or other person soliciting or effecting, or attempting to effect, a contract of insurance contrary to this section, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding one hundred dollars for each offense.—Rev., 3497.

449. Contributing to political purposes.—No insurance company or association, including fraternal beneficiary associations, doing business in this state shall, directly or indirectly, pay or use, or offer, consent or agree to pay or use any money or property for or in aid of any political party, committee or organization, or for or in aid of any corporation, joint-stock or other association organized or maintained for political purposes, or for or in aid of any candidate for political office, or for nomination for such office, or for any political purpose whatsoever, or for the reimbursement or indemnification of any person for money or property so used. Any officer, director, stockholder, attorney or agent of any corporation or association which violates any of the provisions of this act, who participates in, aids, abets or advises, or consents to any such violation, and any person who solicits or knowingly receives any money or property in violation of this act, shall be guilty of a misdemeanor, and be punished by imprisonment for not more than one year and a fine of not more than one thousand dollars; and any officer aiding or abetting in any contribution made in violation of this act shall be liable to the company or association for the amount so contributed. And the insurance commissioner may revoke the license of any company violating this act. No person shall be excused from attending and testifying, or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial for a violation of any of the provisions of this act, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or degrade him; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be used against him upon any criminal investigation or proceeding. Any person violating the provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be fined not more than one hundred dollars or imprisoned not more than thirty days, or both, in the discretion of the court.—Laws 1907, c. 121.

CHAPTER XX.

LARCENY.

450. Bank-notes, securities, etc.—If any person shall feloniously steal, take and carry away, or take by robbery, any bank-note, check or order for the payment of money issued by or drawn on any bank, or other society or corporation within this state, or within any of the United States, or any treasury warrant, debenture, certificate of stock,

or other public security, or certificate of stock in any corporation, or any order, bill of exchange, bond, promissory note, or other obligation, either for the payment of money or for the delivery of specific articles, being the property of any other person, or of any corporation (notwithstanding any of the said particulars may be termed in law a chose in action), such felonious stealing, taking and carrying away, or taking by robbery, shall be felony of the same nature and degree and in the same manner as it would have been if the offender had feloniously stolen, or taken by robbery, money, goods, or property of any value, and such offender for every such offense shall suffer such punishment, and be subject to the same pains, penalties and disabilities as he should or might have suffered if he had feloniously stolen or taken by robbery money, goods, or other property of value.—Rev., 3498.

451. By servant.—If any servant or employee to whom any money, goods or other chattels, or any of the articles, securities, or choses in action mentioned in the preceding section, by his master shall be delivered safely to be kept to the use of his master, shall withdraw himself from his master and go away with the said money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned as aforesaid, or any part thereof, with intent to steal the same and defraud his master thereof, contrary to the trust and confidence in him reposed by said master; or if any servant, being in the service of his master, without the assent of his master, shall embezzle such money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned as aforesaid, or any part thereof, or otherwise convert the same to his own use, with like purpose to steal them, or defraud his master thereof, the servant so offending shall be fined or imprisoned in the state's prison or county jail not less than four months nor more than ten years, at the discretion of the court: Provided that nothing in this section contained shall extend to apprentices or servants within the age of sixteen years.—Rev., 3499.

452. Distinction between grand and petit, abolished.—All distinctions between petit and grand larceny, where the same hath had the benefit of clergy, is abolished; and the offense of felonious stealing, where no other punishment shall be specifically prescribed therefor by statute, shall be punished as petit larceny is: Provided, that in cases of much aggravation, or of hardened offenders, the court may, in its discretion, sentence the offender to the state's prison for a period not exceeding ten years.—Rev., 3500.

453. Dogs subject of larceny.—If any person shall feloniously take, steal and carry away any dog listed for taxation on which there is paid an annual tax of one dollar, he shall be guilty of larceny.—Rev., 3501.

454. Ginseng growing on land of another.—All persons shall be allowed to dig ginseng at any time of the year for the purpose of replanting the same. If any person shall take and carry away, or shall aid in taking or carrying away, any ginseng growing upon the lands of another person, with intent to steal the same, he shall be guilty of a felony, and shall be imprisoned not less than two years nor more than five years in the discretion of the court: Provided, that such ginseng, at the time the same be so taken, shall be in beds and the land upon which such beds are located shall be surrounded by a lawful fence.—Rev., 3502.

455. Growing crops.—If any person shall steal, or feloniously take and carry away any maize, corn, wheat, rice, or other grain, or any cotton, tobacco, potatoes, peanuts, pulse, or any fruit, vegetable, or other product cultivated for food or market, growing, standing or remaining ungathered in any field or ground, he shall be guilty of larceny, and punished accordingly.—Rev., 3503.

456. Live stock, felonious injury equal to.—If any person shall pursue, kill or wound any horse, mule, ass, jennet, cattle, hog, sheep or goat, the property of another, with the intent unlawfully and feloniously to convert the same to his own use, he shall be guilty of a felony, and shall be punishable, in all respects, as if convicted of larceny, though such animal may not have come into the actual possession of the person so offending.—Rev., 3504.

457. Of horse.—If any person shall steal any horse, mare, gelding, or mule, he shall suffer imprisonment at hard labor for not less than five nor more than twenty years, at the discretion of the court. A count under this section may be joined in a bill of indictment with a count under section three thousand five hundred and nine.—Rev., 3505.

458. Punishment for.—In all cases of larceny where the value of the property stolen does not exceed twenty dollars, the punishment shall, for the first offense, not exceed imprisonment in the state's prison or common jail for a longer term than one year. If the larceny is from the person, or from the dwelling by breaking and entering in the daytime, this section shall have no application. In all cases of doubt, the jury shall, in the verdict, fix the value of the property stolen.—Rev., 3506.

459. Receiving.—If any person shall receive any chattel, property, money, valuable security, or other thing whatsoever, the stealing or taking whereof shall amount to larceny or felony, either at common law or by virtue of any statute made or hereafter to be made, such person knowing the same to have been feloniously stolen or taken, every such receiver shall be guilty of a misdemeanor, and may be indicted and convicted, whether the felon stealing and taking such chattels, property, money, valuable security, or other thing shall or shall not have been previously convicted, or shall or shall not be amenable to justice; and any such receiver may be dealt with, indicted, tried and punished in any county in which he shall have, or shall have had, any such property in his possession, or in any county in which the thief may be tried, in the same manner as such receiver may be dealt with, indicted, tried and punished in the county where he actually received such chattel, money, security, or other thing; and such receiver shall be punished as one convicted of larceny.—Rev., 3507.

460. Records, registration books; indictment for.—If any person shall steal, or for any fraudulent purpose shall take from its place of deposit for the time being, or from any person having lawful custody thereof, or shall unlawfully and maliciously obliterate, injure or destroy any record, writ, return, panel, process, interrogatory, deposition, affidavit, rule, order or warrant of attorney, or any original document whatsoever, of or belonging to any court of record, or relating to any matter civil or criminal, begun, pending or terminated in any such court, or any bill, answer, interrogatory, deposition, affidavit, order or decree or any original document whatsoever, of or belonging to any court or relating to any cause or matter begun, pending or terminated in any such court, every such offender shall be guilty of a misdemeanor; and in any indictment for such offense it shall not be necessary to allege that the article, in respect to which the offense is committed, is the property of any person or that the same is of any value. And if any person shall steal, or for any fraudulent purpose shall take from the register's office, or from any person having the lawful custody thereof, or shall unlawfully and wilfully obliterate, injure or destroy any book wherein the deeds or other instruments of writing are registered, or any other book of registration or record required to be kept by the register of deeds, or shall unlawfully destroy, obliterate, deface or remove any record of proceedings of the board of county commissioners, or unlawfully and fraudulently abstract any record, receipt, order

or voucher or other paper-writing required to be kept by the clerk of the board of commissioners of any county, he shall be guilty of a misdemeanor.—Rev., 3508.

461. Temporary use of horse.—If any person shall unlawfully take and carry away any horse, gelding, mare or mule, the property of another person, secretly and against the will of the owner of said property, with intent to deprive the owner of said property of the special or temporary use of the same, or with the intent to use said property for a special or temporary purpose, the person so offending shall be guilty of larceny, and punished by imprisonment in the state's prison or county jail not less than four months nor more than ten years, and fined in the discretion of the court: Provided, this section shall not be construed to repeal or in any way affect section three thousand five hundred and five.—Rev., 3509.

462. Temporary use of automobile, etc.—If any person shall unlawfully take and carry away any automobile or electrical vehicle of any nature, kind or description whatsoever, the property of another person, secretly and against the will of the owner of said property, with intent to deprive the owner of said property of the special or temporary use of the same, or with the intent to use said property for a special or temporary purpose, the person so offending shall be guilty of larceny, and punished by imprisonment in the state's prison or county jail not less than four months nor more than ten years, in the discretion of the court: Provided, this section shall not be construed to repeal any other section for larceny.—Laws 1907, c. 126.

463. Wills.—If any person, either during the life of the testator or after his death, shall steal or for any fraudulent purpose destroy or conceal any will, codicil or other testamentary instrument, he shall be guilty of a misdemeanor.—Rev., 3510.

464. Wood or other property on land.—If any person, not being the present owner or bona fide claimant thereof, shall wilfully and unlawfully enter upon the lands of another and carry off or be engaged in carrying off any wood or other kind of property whatsoever, growing or being thereon, the same being the property of the owner of the premises, or under his control, keeping or care, such person shall, if the act be done with felonious intent, be guilty of larceny, and punished as for that offense; and if not done with such intent, shall be guilty of a misdemeanor.—Rev., 3511.

CHAPTER XXI.

LIQUORS.

465. Adulteration of.—If any person shall adulterate any spirituous, alcoholic, vinous or malt liquors by mixing the same with any substance of whatever kind, except as hereinafter provided, or if any person shall sell or offer to sell any spirituous, alcoholic, vinous or malt liquors, knowing the same to be thus adulterated, or shall import into this state any spirituous or intoxicating liquors, and sell or offer to sell such liquor, knowing the same to be adulterated, he shall be guilty of a misdemeanor and fined or imprisoned, or both, at the discretion of the court.—Rev., 3512.

466. Adulteration of, selling recipe for.—If any person who shall sell or offer to sell any recipe or formula whatever for adulterating any spirituous or alcoholic liquors, by mixing the same with any substance of whatever kind, except as hereinafter provided, he shall be guilty of a felony, and fined or imprisoned as is provided in the preceding sec-

tion: Provided, that this section and sections three thousand five hundred and twelve and three thousand five hundred and twenty-two shall not be so construed as to prevent druggists, physicians, and persons engaged in the mechanical arts from adulterating liquors for medical and mechanical purposes.—Rev., 3513.

467. Dispensary officer or employee violating rules, etc.—If any officer or employee of a dispensary established by law shall violate any of the rules and regulations prescribed by the governing body of the city or town in which said dispensary is located, or by the dispensary commissioners, which said rules and regulations are hereby declared to be ordinances of said city or town, he shall be guilty of a misdemeanor, and shall, upon conviction, be fined or imprisoned, or both, in the discretion of the court.—Rev., 3514.

468. Drinking on, or refusing to leave dispensary premises.—If any person shall drink liquor on the premises on which any dispensary is located, or shall refuse or fail to leave said premises, after being ordered by the manager so to do, he shall be guilty of a misdemeanor, and fined not more than fifty dollars or imprisoned not more than thirty days.—Rev., 3515.

469. Druggists failing to keep record of sales.—If any druggist shall fail to keep the record of sales of liquor, or shall refuse to permit examination of such record by the officers and other persons, as by law provided, he shall be guilty of a misdemeanor, and fined or imprisoned, or both, in the discretion of the court.—Rev., 3516.

470. Furnishing to inmates of institutions.—If any person shall sell or give to any inmate of any charitable or penal institution any intoxicating drink, any narcotic or poison or poisonous substances, except upon the prescription of a physician, or shall give or sell to any such inmate any deadly weapon, or any cartridge or ammunition for firearms of any kind, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined or imprisoned at the discretion of the court, and if he be an officer or employee of any institution of the state, be dismissed from his office.—Rev., 3517.

471. Local option territory, sale in.—If any person shall sell any spirituous, vinous or malt liquors within any city, county, town or township, in which a majority has voted for no license, he shall be guilty of a misdemeanor, and be fined or imprisoned, or both, at the discretion of the court.—Rev., 3518.

472. Local option territory, sale by druggist.—If any druggist shall sell or otherwise dispose of any spirituous, vinous or malt liquors except for bona fide medical purposes and upon the prescription of a practicing physician, licensed by the state board of medical examiners, known to such druggist to be of reputable standing in his profession or recommended as such by a physician who is so known, which prescription shall be in writing signed by such physician, and shall specify the name of the person to be supplied and quantity or dose, or if any physician or other person shall give, procure or aid in procuring any false or fraudulent prescription for any spirituous, vinous or malt liquors in violation of the provisions of the preceding section, he shall be guilty of a misdemeanor, and on conviction shall be fined or imprisoned at the discretion of the court. And no physician shall give a prescription to any drugstore in which he is financially interested, and nothing contained in this section shall be construed as authorizing any druggist to refill any prescription for intoxicating liquors.—Rev., 3519.

473. Manager of dispensary buying, without authority; adulterating; making false entry on books.—If the manager or clerk of a dispensary shall procure any intoxicating liquors from any person other than those that the dispensary board shall direct, and offer the same for sale, or

shall adulterate or cause to be adulterated, any intoxicating, spirituous, vinous or malt liquors, by mixing with coloring matter or any drug or ingredient whatever, or shall mix the same with water or with other liquor of different kind or quality, or shall make a false entry in any book or returns required by law, he shall be guilty of a misdemeanor.—Rev., 3520.

474. Officers, etc., receiving gifts.—If any commissioner, manager, clerk or employee of any dispensary, whether established under the provisions of the general law or by special act, shall accept, or receive, or consent to receive, directly or indirectly, from any person, firm or corporation, or from any agent, salesman or employee of such person, firm or corporation selling wines, liquors, beers, bottles and other articles and supplies for sale and use in such dispensary, any gift, reward, bonus, discount, gratuity or other thing of value, he shall be guilty of a felony, and punished by imprisonment in the state's prison for a term not exceeding five years, or fined not exceeding five thousand dollars, or both, in the discretion of the court.—Laws 1907, c. 91.

475. Manufacture of, outside of towns.—If any person shall manufacture or rectify any spirituous, vinous or malt liquors, or intoxicating bitters, except in incorporated cities or towns, having not less than one thousand population wherein the manufacture of liquor is not now, or may not hereafter be prohibited by law, or regulated by special statute, he shall be guilty of a misdemeanor and be imprisoned not less than four months nor more than two years; upon a second conviction he shall be guilty of a felony and be imprisoned not less than one nor more than three years, and be fined not less than one hundred dollars nor more than one thousand dollars, or both. This section shall not be construed to prohibit the manufacture of wine or cider from grapes, fruit, or berries grown on the lands of the manufacturer or purchased by the manufacturer from the growers thereof, nor to brandy manufactured from fruit or grapes.—Rev., 3521.

476. Manufacturing or selling poisonous.—If any person shall manufacture, sell, or in any way deal out spirituous liquors, of any name or kind, to be used as a drink or beverage, and the same shall be found to contain any foreign properties or ingredients poisonous to the human system, he shall be guilty of a felony and imprisoned in the state's prison not less than five years, and may be fined in the discretion of the court. It shall be competent for any citizen after making purchase of any spirituous liquors to cause the same to be analyzed by some known competent chemist, and if upon such analysis it shall be found to contain any foreign poisonous matter it shall be prima facie evidence against the party making such a sale.—Rev., 3522.

476a. Minors excluded from bar-rooms, billiard rooms, etc.—It shall be unlawful for any proprietor, manager, clerk or person in charge of any bar-room, dispensary or other place where any intoxicating liquors are sold, or any public billiard or pool-room, to allow any minor under eighteen years old to loiter in such bar-room, dispensary or other place where intoxicating liquors are sold, billiard room or pool-room, or to carry from such bar-room or dispensary any intoxicating liquors, or to engage in any game in such billiard room or pool-room, without the written consent of a parent or guardian of such minor under eighteen years old: Provided, this act shall not apply to pool-rooms and billiard rooms owned, controlled and operated by social clubs and by associations, societies and fraternal orders where such pool and billiard tables are kept for the use of the members of such associations, societies and clubs and their guests.

It shall be unlawful for any minor under eighteen years old to enter any dispensary, bar-room or place where liquors are sold, billiard room or pool-room, except upon business other than carrying away any in-

toxicating liquors or engaging in any game, or loitering or remaining in such dispensary, bar-room, billiard or pool-room longer than is necessary to transact the business herein excepted.

Any minor under eighteen years old who, after being directed to leave any dispensary, bar-room, billiard or pool-room, shall persist in remaining therein, against the will of the proprietor, manager, clerk or other person in charge thereof, shall be guilty under this act.

Any person violating the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished in the discretion of the court. [This act applies only to Wake county.]—Laws 1907, c. 953.

477. Minors, purchase for, from dispensary.—If any person shall knowingly purchase any liquors from any dispensary for any minor, or for any other person to whom the sale of liquors shall have been forbidden by the commissioners of such dispensary, he shall be guilty of a misdemeanor.—Rev., 3523.

478. Minors, selling to.—If any dealer in intoxicating drinks or liquors sell, or in any manner part with for a compensation therefor, either directly or indirectly, or give away such drinks or liquors, to any unmarried person under the age of twenty-one years, knowing the said person to be under the age of twenty-one years, he shall be guilty of a misdemeanor; and such sale or giving away shall be prima facie evidence of such knowledge. Any person who keeps on hand intoxicating drinks or liquors for the purpose of sale or profit shall be considered a dealer within the meaning of this section.—Rev., 3524.

479. Minors, selling to; exemplary damages.—The father, or if he be dead, the mother, guardian or employer of any minor to whom a sale or gift shall be made in violation of the preceding section, shall have a right of action in a civil suit against the person or persons so offending by such sale or gift, and upon proof of such illicit sale or gift shall recover from such party or parties so offending such exemplary damages as a jury may assess: Provided, that such assessment shall not be less than twenty-five dollars.—Rev., 3525.

480. Officer failing to discharge duty removed from office.—If any officer mentioned in sections three thousand five hundred and thirty-three and three thousand five hundred and thirty-four shall fail or refuse to use due diligence in the execution of the provisions of such sections, after being informed of violation thereof, he shall be guilty of laches in office and such failure be cause for removal therefrom.—Rev., 3526.

481. Physicians and druggists.—If any physician shall make any prescription, except in the case of sickness, for the purpose of aiding or abetting any person who is not bona fide under his charge, to purchase any intoxicating liquors contrary to law, or if any druggist shall duplicate the prescription of a physician for intoxicating liquors for any person not bona fide under his charge, without the written direction of the physician who gave the same, he shall be guilty of a misdemeanor, and, upon conviction, shall be fined or imprisoned, or both, in the discretion of the court, for each and every offense.—Rev., 3527.

482. Political speaking, sale within two miles of.—If any person shall sell or give away, either directly or indirectly, any spirituous liquors, wine or bitters containing alcohol, within two miles of any place at which political public speaking shall be advertised to take place, and does take place, during the day on which said speaking shall take place, he shall be guilty of a misdemeanor, and be fined not less than ten dollars nor more than twenty dollars, or imprisoned not exceeding twenty days.—Rev., 3528.

483. Sale in towns without license.—If any person shall manufacture, sell or otherwise dispose of for gain any spirituous, vinous or

malt liquors or intoxicating bitters, in any incorporated city or town, without first obtaining, as provided by law, a license therefor both from the board of commissioners of the county in which said town or city is situated, and from the board of aldermen or city councilmen, or the governing authorities, by whatever name called, of said city or town, he shall be guilty of a misdemeanor and be fined not more than two hundred dollars, or imprisoned not more than six months, or both. This section shall not apply to the sales of spirituous, vinous or malt liquors, or intoxicating bitters by druggists upon the written prescription of a legally qualified physician having the purchaser under his charge.—Rev., 3529.

484. Sale of, outside of towns.—If any person, firm or corporation shall sell, or otherwise dispose of for gain, any spirituous, vinous or malt liquors, or intoxicating bitters, except in incorporated cities and towns, wherein the sale of liquor is not now or may not hereafter be prohibited by law, or regulated by special statute, he shall be guilty of a misdemeanor and upon conviction be fined not exceeding two hundred dollars, or imprisoned not exceeding six months, or both. This section shall not apply to the sale of wine or cider manufactured from grapes, berries, or fruits grown upon the land of the person so manufacturing the same, or purchased by the manufacturer from the grower thereof, nor to brandy manufactured from fruits or grapes and sold in original packages of not less than five gallons, nor to sales of spirituous, vinous, or malt liquors by druggists, upon the written prescription of a legally qualified physician having the purchaser under his charge.—Rev., 3530.

485. Sale within 200 feet of church.—No intoxicating liquors shall be sold in any city, town or county in this state within two hundred feet of any church or school-house or place of public worship. Any person violating section one of this act shall be fined for each and every offense, fifty dollars, or imprisoned in the county jail for thirty days: Provided, that this act shall not apply to drug-stores where intoxicating liquors are sold upon prescription.—Laws 1907, c. 802. [This act not applicable to New Hanover and Martin counties.—Laws 1907, c. 1018.]

486. Selling in towns having dispensaries.—If any person shall, in any town in which a dispensary is established by law, sell or otherwise dispose of for gain any intoxicating liquors except as provided for sales in the dispensary, he shall be guilty of a misdemeanor, and fined or imprisoned, or both, in the discretion of the court.—Rev., 3531.

487. Sunday, Selling on.—If any person shall sell spirituous, or malt, or other intoxicating liquors on Sunday, except on the prescription of a physician, and then only for medical purposes, he shall be guilty of a misdemeanor, and to be punished by fine or imprisonment, or both, in the discretion of the court.—Rev., 3532.

488. Unlawful distilleries, permitting, on land.—If any person shall knowingly permit or allow any distillery or other apparatus for the making or distilling of spirituous liquors to be set up for operation or to be operated on lands in his possession or control in any territory where the manufacture and sale of intoxicating liquors is prohibited by the state law shall be guilty of a misdemeanor and shall be punished in the discretion of the court. It shall be the duty of the sheriff and his deputies, and of any police officer to search for and seize any distillery or apparatus used for the manufacture of spirituous liquors in violation of any state law, and to deliver such distillery or apparatus to the proper authorities of the United States government for confiscation. It shall also be the duty of such officers to destroy any materials in use, or to be used, found at any distillery for the manufacture of intoxicating liquors contrary to law; and to seize any spirituous liquors found in the possession of any person not tax-paid and stamped as re-

quired by the United States government, and to deliver the said liquors to the proper officers of the United States government for confiscation; and when informed of violation of this section to procure warrants and to arrest the offender, and subpœna all persons who may have information concerning the commission of the offense charged against the party arrested.—Rev., 3533.

Note.—See also as to liability of officer, s. 480.

489. Unlawful sale through agents.—If any person shall unlawfully and illegally procure and deliver any spirituous or malt liquors to another, he shall be deemed and held in law to be the agent of the person selling said spirituous and malt liquors, and shall be guilty of a misdemeanor and shall be punished in the discretion of the court. Whenever the solicitor of any judicial district shall have good reason to believe that liquor has been manufactured or sold contrary to law within any county in their said district and shall believe that any person shall have knowledge of the existence and establishment of any illicit distillery, or that any person has sold liquor illegally, then it shall be lawful for said solicitor to apply to the clerk of the superior court of the county wherein said offense is supposed to have been committed to issue subpœnas for the said person so having knowledge of said offense to appear before the next grand jury drawn for said county, there to testify upon oath what he may know touching the existence, establishment and whereabouts of said distillery or persons who have sold intoxicating liquors contrary to law, and shall give the names and personal description of the keepers thereof, and such evidence, when so obtained, shall be considered and held in law as information on oath upon which the grand jury shall make presentment, as provided by law, in other cases.—Rev., 3534.

Note.—For liability of neglecting officers, see s. 480.

490. Wine, in what quantities; where drunk.—If any person shall sell wine manufactured from fruit or grapes grown by himself, or bought from the growers thereof, in quantities less than one gallon, except to churches wishing to procure wine for communion services, or if any person shall drink or permit such wine to be drunk upon the premises where bought, he shall be guilty of a misdemeanor.—Rev., 3535.

CHAPTER 22.

NATIONAL GUARD.

491. Injuring military property.—If any person shall wantonly or wilfully injure or destroy any arms, equipment or other military property of the state, and refuse to make good such injury or loss, or shall sell, dispose of, create or remove the same with intent to sell or dispose thereof, he shall be fined not more than one hundred dollars, or imprisoned not more than six months, or both.—Rev., 3536.

492. Member of national guard failing to return property of state.—If any member of the North Carolina national guard shall wilfully fail to return any property of the state or the United States to the armory or other place of deposit, when notified by competent authority so to do, he shall be guilty of a misdemeanor and fined not exceeding fifty dollars, or imprisoned not exceeding thirty days.—Rev., 3537.

493. Organizing company without authority.—If any person shall organize a military company, or drill or parade under arms as a military body, except under the militia laws and regulations of the state, or shall exercise or attempt to exercise the power or authority of a military officer in this state, without holding a commission from the governor, he shall be guilty of a misdemeanor.—Rev., 3538.

494. Placing name on muster roll wrongfully.—If any officer of the militia of the state shall knowingly or wilfully place, or cause to be placed, on any muster roll the name of any person not regularly or lawfully enlisted, or the name of any enlisted man who is dead or who has been discharged, transferred, or has lost membership for any cause whatsoever, or who has been convicted of any infamous crime, he shall be guilty of a misdemeanor.—Rev., 3539.

495. Refusing to deliver public arms to officer on demand.—Every commissioned officer of the militia, whenever and wherever he shall see or learn that any of the arms or accoutrements or other military property belonging to the state is in the possession of any person other than in whose hands they may be placed for safe-keeping, under the provisions of the law, shall make immediate demand for the same personally or in writing; and should such person refuse to deliver them to the officer he shall be guilty in like manner, and punished in like manner as for selling or embezzling public arms.—Rev., 3540.

496. Selling accoutrements.—If any person shall sell, dispose of, pawn or pledge, destroy or injure, or wilfully retain after demand made, any public property issued for the purpose of arming or equipping the militia of the state, he shall be guilty of a misdemeanor.—Rev., 3541.

497. Selling public arms.—If any person to whom shall be confided public arms or accoutrements, shall sell, or in any manner embezzle the same, or any part thereof, or if any person shall purchase any of them, knowing them to be such, the person so offending shall be guilty of a misdemeanor.—Rev., 3542.

CHAPTER 23.

NAVIGATION.

498. Artificial islands, erecting.—If any person shall erect artificial islands or lumps in any of the waters of the state east of the Wilmington and Weldon railroad and Petersburg and Weldon railroad, he shall be guilty of a misdemeanor.—Rev., 3543.

499. Boats, tackle, etc., removing.—If any person shall take away from any landing or other place where the same shall be, or shall loose, unmoor, or turn adrift from the same, any boat, canoe, or pettiaugua, oars, paddles, sails and tackle belonging to or in the lawful custody of any person; or if any person shall direct the same to be done without the consent of the owner, or the person having the custody or possession of such boat, canoe, or pettiaugua, he shall forfeit and pay to such owner, or person having the custody and possession as aforesaid, the sum of two dollars, and shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days, in the discretion of the court. And the owner may also have his action for such injury. The penalties aforesaid shall not extend to any person who shall press any boat, canoe or pettiaugua by public authority.—Rev., 3544.

500. Buoys, carelessly dragging, from position.—If any person having charge of any raft passing any buoy, beacon or day mark, shall not exercise due diligence in keeping clear of it, or if unavoidably fouling it, shall not exercise due diligence in clearing it, without dragging from its position such buoy, beacon or day mark, he shall be guilty of a misdemeanor, and punished by a fine not to exceed fifty dollars.—Rev., 3545.

501. Buoys, beacons, etc., interfering with.—If any person shall moor any vessel of any kind or name whatsoever, or any raft or any

part of a raft, to any buoy, beacon or day mark, placed in the waters of North Carolina by the authority of the United States lighthouse board, or shall in any manner hang on with any vessel or raft, or part of a raft, to any such buoy, beacon or day mark, or shall wilfully remove, damage or destroy any such buoy, beacon or day mark, or shall cut down, remove, damage or destroy any beacon erected on land in this state by the authority of the said United States lighthouse board, or through unavoidable accident run down, drag from its position or in any way injure any buoy, beacon or day mark, as aforesaid, and shall fail to give notice as soon as practicable of having done so, to the lighthouse inspector of the district in which said buoy, beacon or day mark may be located, or to the collector of the port, or, if in charge of a pilot, to the collector of the port from which he comes, he shall for every such offense be guilty of a misdemeanor and punished by a fine not to exceed two hundred dollars, or imprisoned not to exceed three months, or both, at the discretion of the court.—Rev., 3546.

502. Encumbering docks of Wilmington.—If any person shall encumber any of the public docks of the city of Wilmington with logs, hulks, flats or barges, trash or garbage he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined ten dollars, and if the encumbrance be not removed immediately upon notice from the harbor-master, he shall be fined ten dollars for each and every day thereafter such nuisance shall remain.—Rev., 3547.

503. Failure to report finding wrecked property.—If any person shall find any wrecked or stranded property on or near the seashore, and no person be present to claim the same, and such finder shall refuse to report such goods found he shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars, or imprisoned not more than thirty days.—Rev., 3548.

504. Flats and barges removed from docks on order of harbor-master.—The owner of any rafts, flats, vessels or other craft lying alongside of any wharf or wharves or before the entrance of any public docks, his or their agents or servants, shall, upon notice from the harbor-master, immediately remove the same, and upon his or their refusal so to do, it shall be the duty of the harbor-master, and he is hereby authorized and directed, after notice as aforesaid to the owner or owners thereof, their agents or servants, forthwith to cause all such rafts, flats, vessels or other craft to be removed at the cost and expense of such owner or owners or their agent or agents, and the owner shall be guilty of a misdemeanor.—Rev., 3549.

505. Lighthouses; anchoring in range of.—If the master of any vessel shall anchor on the range line of any range of lights established by the United States lighthouse board, unless such anchorage is unavoidable, he shall be guilty of a misdemeanor, and punished by a fine not to exceed fifty dollars.—Rev., 3550.

506. Lumbermen to remove obstructions in Albemarle sound.—If any lumberman shall fail to remove all obstructions placed by him in the waters of Albemarle sound and its tributaries, as soon as practicable, after they have ceased to use them for the purpose for which they were placed in said waters, from all places where the water is not less than two feet deep, and also, from all landing places on both sides, for the space of sixty feet from the shore outward, he shall be guilty of a misdemeanor, and fined not less than one dollar nor more than fifty dollars, at the discretion of the court.—Rev., 3551.

507. Obstructing harbor-master of Wilmington.—If any person shall hinder, delay, obstruct or in any manner wilfully interfere with the harbor-master of Wilmington in the discharge of his duty he shall be guilty of a misdemeanor, and be fined not more than fifty dollars or imprisoned not more than thirty days.—Rev., 3552.

508. Obstructing waters of Currituck sound.—It shall be unlawful for any person to impair or obstruct navigation in the waters of Currituck sound and tributaries, and all persons, corporations, companies, or clubs, who have heretofore had placed or placed any hedging or hedgings across the mouth of any bay, creek, strait or lead of water in Currituck sound or tributaries, made of iron, wire or wood or otherwise, for the purpose of preventing the free passage of boats or vessels of any size or class, or to stop the public use of any such bay, creek, strait or lead of water, are hereby required to forthwith remove the same. Any person, corporation, or club having violated or who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars nor less than ten dollars, or imprisoned not more than thirty days, at the discretion of the court.—Rev., 3553.

509. Repairing boats in public docks in Wilmington.—If any person shall, for the purpose of repair, put any flat, steamboat or other craft, in any of the street docks of the city of Wilmington, or shall, for the purpose of repair, ground any such flat, steamboat or other craft in any of the public docks of such city on the east side of the Cape Fear river between Church street dock and Red Cross street dock, he shall be guilty of a misdemeanor, and shall be fined not more than fifty dollars, or imprisoned not more than thirty days.—Rev., 3554.

510. Seamen; enticing from vessel.—If any person shall induce any seaman, in the employment of any domestic or foreign vessel, in any of the ports of North Carolina, to leave any such vessel before his term of service shall have expired, he shall be guilty of a misdemeanor, and fined not exceeding fifty dollars, or imprisoned not exceeding thirty days.—Rev., 3555.

511. Seamen; secreting or harboring.—If any person shall secrete or harbor any seaman who has deserted from any domestic or foreign vessel, knowing that such seaman has deserted, he shall be guilty of a misdemeanor, and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days; and if such seaman be found concealed or secreted by any person on his premises, such concealment and secretion shall be deemed prima facie evidence that such person knew that such seaman was a deserter.—Rev., 3556.

512. Seamen; search warrants for.—If any credible witness shall complain, upon oath before any justice of the peace, that any person has concealed on his premises any seaman who has deserted from any such domestic or foreign vessel, it shall be lawful for such justice to grant a search warrant to be executed within the limits of his county to any proper officer, authorizing him to search for such seaman, and to arrest the person on whose premises he may be found, and the person on whose premises such seaman shall be found shall be adjudged to pay the costs of such search warrant, if on examination it shall appear that such seaman was secreted or concealed by such person; otherwise the costs shall be paid by the party making the complaint.—Rev., 3557.

513. Seamen; appeal, and procedure thereon.—In all cases arising under the three preceding sections, if any appeal is prayed by either party at the time of the trial, it shall be granted; but no appeal shall be granted by any justice at any time after the final hearing of the case. In case an appeal is prayed at the trial, it shall be the duty of the justice to proceed immediately to reduce the testimony of any witness whose testimony is material, to writing (if such witness shall be master, officer, or seaman on board of any vessel), in the presence of the adverse party, who may cross-question such witness, which testimony shall be subscribed by such witness and returned by the justice with

the papers in the case; and on the hearing in the appellate court, the testimony so taken and reduced to writing by said justice shall be read, heard and accepted as the true and lawful testimony of such witness, as if such person were in person present to give evidence. For reducing such testimony to writing the justice shall receive the same fees as are allowed for taking depositions.—Rev., 3558.

514. Streams, obstructing.—If any person shall wilfully fell any tree, or wilfully put any obstruction, except for the purposes of utilizing water as a motive power, in any branch, creek or other natural passage for water, whereby the natural flow of water through such passage is lessened or retarded, and whereby the navigation of such stream by any raft or flat may be impeded, delayed or prevented, the person so offending shall be guilty of a misdemeanor, and fined not to exceed fifty dollars, or imprisoned not to exceed thirty days. Nothing in this section shall prevent the erection of fishdams or hedges which do not extend across more than two-thirds of the width of any stream where erected, but if extending over more than two-thirds of the width of any stream, the said penalties shall attach.—Rev., 3559.

515. Streams navigable, obstructing; pilot failing to give information.—If any person shall cast or throw from any vessel, into the navigable waters of Carteret or Onslow counties, or Tar or Pamlico river, or into the navigable waters of the Cape Fear, or any other river in the state, or into any channel of navigable water elsewhere than in a river, any ballast, stone, shells, earth, trash or other substance likely to be injurious to the navigation of such waters, rivers or channel; or if any person shall wilfully pull down any beacon, stake or other mark, erected or placed by virtue of any by-law, order or regulation, passed or ordained by any commissioners of navigation, he shall be guilty of a misdemeanor and shall forfeit and pay two hundred dollars, to be recovered for the use of the commissioners in whose waters the offense was committed. If any pilot shall knowingly suffer any such unlawful act to be done, and shall not within ten days thereafter give to the said commissioners, or one of them, information thereof, such pilot shall likewise be guilty of a misdemeanor; and, besides the usual punishment of such offense, on conviction, shall be forever incapable of acting as a pilot in the state.—Rev., 3560.

516. Streams; obstructing passage of boats on.—If any person shall obstruct the free passage of boats along any river or creek, by felling trees, or by any other means whatever, he shall be guilty of a misdemeanor.—Rev., 3561.

517. Violating chapter on wrecks.—If any person shall violate any of the provisions of the chapter entitled Wrecks, he shall be guilty of a misdemeanor.—Rev., 3562.

Note.—See chapter Wrecks, vol. 2 of the Revisal.

518. Wrecks, commissioner of, violating law.—If any commissioner of wrecks shall by fraud or wilful neglect violate any of the provisions of the chapter entitled Wrecks, or abuse the trust reposed in him, he shall forfeit and pay double the amount of damages to the party aggrieved, and shall be guilty of a misdemeanor, and upon conviction shall forfeit his office and shall thereafter be incapable of acting as commissioner.—Rev., 3563.

519. Wrecks, resisting commissioner of.—If any person shall wilfully and unlawfully resist, delay or obstruct any commissioner of wrecks in discharging or attempting to discharge his duties as such commissioner, he shall be guilty of a misdemeanor.—Rev., 3564.

CHAPTER XXIV.

OFFICERS.

520. Acting without qualifying.—If any officer shall enter on the duties of his office before he executes and delivers to the authority entitled to receive the same, the bonds required by law, and qualifies by taking and subscribing and filing in the proper office the oath of office prescribed, he shall be guilty of a misdemeanor and shall be ejected from his office.—Rev., 3565.

521. Board of charities furnished information.—If the board of commissioners of any county or the justices of the peace of any township, or any officer or employee of any charitable or penal institution of the state shall fail, refuse or neglect to furnish any information required by law to be furnished to the board of public charities of North Carolina, when they have been provided with the necessary blank forms for such reports, or shall fail upon request to afford proper facilities for the examination of any charitable or penal institution of the state, they shall be guilty of a misdemeanor.—Rev., 3566.

522. Bodies for dissection.—If any person shall fail or refuse to perform any duty imposed upon him by the law providing for distribution of dead bodies for dissection in medical schools, he shall be guilty of a misdemeanor and fined not exceeding one hundred dollars.—Rev., 3567.

523. Bribery of.—If any person holding office under the laws of this state who, except in payment of his legal salary, fees or perquisites, shall receive, or consent to receive, directly or indirectly, anything of value or personal advantage, or the promise thereof, for performing or omitting to perform any official act, or with the express or implied understanding that his official action, or omission to act, is to be in any degree influenced thereby, he shall be guilty of a felony, and punished by imprisonment in the state's prison for a term not exceeding five years, or fined not exceeding five thousand dollars, or both, in the discretion of the court.—Rev., 3568.

524. Bribe, offering to.—If any person shall offer a bribe, whether it be accepted or not, he shall be guilty of felony, and punished by imprisonment for a term not less than one year nor more than five years in the state's prison or county jail, in the discretion of the court.—Rev., 3569.

525. Bribery of legislator.—If any person shall directly or indirectly promise, offer or give, or cause, or procure to be promised, offered or given, any money, goods, bribe, present or reward, or any promise, contract, undertaking, obligation or security for the payment or delivery of any money, goods, right of action, bribe, present or reward, or any other valuable thing whatever, to any member of the senate or house of representatives of this state after his election as such member, and either before or after he shall have qualified and taken his seat, with intent to influence his vote or decision on any question, matter, cause or proceeding which may then be pending before the general assembly, or which may come before him for action in his capacity as a member of the general assembly, said person so offering, promising or giving, or causing or procuring to be promised, offered or given any such money, goods, bribe, present or reward, or any bond, contract, undertaking, obligation or security for the payment or delivery of any money, goods, bribe, present or reward, or other valuable thing whatever, and the member-elect who shall in anywise accept or receive the same or any part thereof, shall be guilty of a felony, and fined not exceeding double the amount so offered, promised or given, and imprisoned

in the state's prison not exceeding five years, and the person convicted of so accepting or receiving the same, or any part thereof, shall forfeit his seat in the general assembly and be forever disqualified to hold any office of honor, trust or profit under this state.—Rev., 3570.

526. Buying and selling offices.—If any person shall bargain or sell an office or deputation of an office, or any part or parcel thereof, or shall take money, reward, or other profit, directly or indirectly, or shall take any promise, covenant, bond or assurance for money, reward or profit, for an office or the deputation of an office, or any part thereof, which office or any part thereof shall touch or concern the administration or execution of justice, or the receipt, collection, control, or disbursement of the public revenue, or shall concern or touch any clerkship in any court of record wherein justice is administered; or if any person shall give or pay money, reward or profit, or shall make any promise, agreement, bond or assurance for any of the said offices, or for the deputation of any of them, or for any part of them, the person so offending in any of the cases aforesaid shall be guilty of a misdemeanor, and on conviction thereof shall forfeit all his right, interest and estate in such office, and every part and parcel thereof, and shall be imprisoned and fined at the discretion of the court.—Rev., 3571.

527. Contracting for own benefit.—If any person, appointed or elected a commissioner or director to discharge any trust wherein the state or any county, city or town may be in any manner interested, shall become an undertaker, or make any contract for his own benefit, under such authority, or be in any manner concerned or interested in making such contract, or in the profits thereof, either privately or openly, singly or jointly with another, he shall be guilty of a misdemeanor.—Rev., 3572.

528. County commissioner approving bond known to be insufficient.—If any county commissioner shall approve any official bond which he knows or believes to be insufficient in the penal sum, or in the security thereof, he shall be guilty of a misdemeanor, and on conviction shall be removed from office and forever disqualified from holding or enjoying any office of honor, trust or profit under the state.—Rev., 3573.

529. County commissioners not heating jail.—If any county commissioner shall fail to have the common jails so heated by furnaces, stoves, or otherwise, as to render them warm and comfortable, he shall, upon conviction, be punished by a fine or imprisonment, or both, in the discretion of the court.—Rev., 3574.

530. Counties, cities, etc., speculation in claims against.—If any clerk, sheriff, register of deeds, county treasurer, or other county, city, town or state officer shall engage in the purchasing of any county, city, town or state claim at a less price than its full and true value, or at any rate of discount thereon, or be interested in any speculation in any such claims, he shall be guilty of a misdemeanor, and fined or imprisoned, and also shall be liable to removal from office at the discretion of the court.—Rev., 3575.

531. Duty; failure to discharge.—If any state or county officer shall fail, neglect or refuse to make, file or publish any report, statement or other paper, or to deliver to his successor all books and other property belonging to his office, or to pay over or deliver to the proper person all moneys which come into his hands by virtue or color of his office, or to discharge any duty devolving upon him by virtue of his office as he is by law required to do, he shall be guilty of a misdemeanor.—Rev., 3576.

532. Escape; officer indictable for; proof.—If any person charged with a crime or sentenced by the court upon conviction of any offense, shall be legally committed to any sheriff, constable or jailer, or shall be arrested by any sheriff, deputy sheriff or coroner acting as sheriff,

by virtue of any *capias* issuing on a bill of indictment, information, or other criminal proceeding, and such sheriff, deputy sheriff, coroner, constable or jailer, wilfully or negligently, shall suffer such person, so charged, or sentenced or committed, to escape out of his custody, the sheriff, deputy sheriff, coroner, constable or jailer so offending, being thereof convicted, shall be removed from office, and fined or imprisoned, or both, at the discretion of the court before whom the trial may be had; and in all such cases it shall be sufficient, in support of the indictment against such sheriff or other officer, to prove that such person so charged or sentenced was committed to his custody, and it shall lie upon the defendant to show that such escape was not by his consent or negligence, but that he had used all legal means to prevent the same, and acted with proper care and diligence: Provided, that such removal of a sheriff shall not affect his duty or power as a collector of the public revenue, but he shall proceed on such duty and be accountable as if such conviction and removal had not been had.—Rev., 3577.

533. Ex-justice of the peace failing to turn over books and papers.—If any justice of the peace, on expiration of his term of office, or if any personal representative of a deceased justice of the peace, shall, after demand upon him by the clerk of the superior court, wilfully fail and refuse to deliver to the clerk of the superior court all dockets, law and other books, and all official papers which came into his hands by virtue or color of his office, he shall be guilty of a misdemeanor.—Rev., 3578.

534. Failure to file report of fines.—If any officer who is by law required to file any report or statement of fines or penalties with the county board of education, shall fail so to do at or before the time fixed by law for the filing of such report, he shall be guilty of a misdemeanor.—Rev., 3579.

535. Falsely acting as inspector.—If any person, who is not a legal or sworn inspector of lumber or other articles, presumes to act as such, he shall forfeit and pay one hundred dollars, and be guilty of a misdemeanor.—Rev., 3580.

536. Habeas corpus; recommitting one discharged thereon.—If any person shall knowingly again imprison or detain one who has been set at large upon any writ of habeas corpus, for the same cause, other than by the legal process or order of the court wherein he shall be bound by recognizance to appear, or of any other court having jurisdiction in the case, he shall be guilty of a misdemeanor.—Rev., 3581.

537. Habeas corpus; false return to writ.—If any person shall make a false return to a writ of habeas corpus, he shall be guilty of a misdemeanor.—Rev., 3582.

538. Habeas corpus; concealing party entitled to writ.—If any one having in his custody or under his power, any party, who, by law, would be entitled to a writ of habeas corpus, or for whose relief such writ shall have been issued, shall, with intent to elude the service of such writ, or to avoid the effect thereof, transfer the party to the custody, or put him under the power or control of another, or shall conceal or change the place of his confinement, or shall knowingly aid or abet another in so doing, he shall be guilty of a misdemeanor.—Rev., 3583.

539. Homestead; failure to allot.—If any officer making a levy under an execution shall refuse or neglect to summon and qualify appraisers to allot a homestead, or a personal property exemption when demanded, or shall unlawfully levy upon the homestead set apart by appraisers, or shall fail to make due return of his proceedings, he shall be guilty of a misdemeanor.—Rev., 3584.

540. Homestead; officers, appraisers and debtor conspiring.—Any officer, appraiser or assessor who shall wilfully or corruptly conspire with any judgment debtor or other appraiser or assessor to undervalue the homestead or personal property exemption of such debtor, or shall assign false metes and bounds, or make or procure to be made a false and fraudulent return thereof, shall be guilty of a misdemeanor.—Rev., 3585.

541. Homestead; officers, appraisers and creditors conspiring.—If any officer, appraiser or assessor shall wilfully or corruptly conspire with any judgment creditor, or other appraiser or assessor, to overvalue the homestead or personal property exemption of any debtor or applicant, or shall assign false metes and boundaries, or make, or procure to be made, false and fraudulent return thereof, he shall be guilty of a misdemeanor.—Rev., 3586.

Note.—For civil liability, see s.

542. Insolvent taxpayers, failure to publish list of.—If any sheriff or tax collector shall fail to publish a list of delinquent taxpayers in his county as required by law, he shall be guilty of a misdemeanor and fined not less than ten nor more than one hundred dollars.—Rev., 3587.

543. Justice of the peace refusing to furnish bill of costs.—If any justice of the peace before whom any trial is held shall refuse to furnish any itemized bill of costs, when demanded by the plaintiff or defendant, he shall be guilty of a misdemeanor, and upon conviction shall be punished at the discretion of the court.—Rev., 3588.

544. Justice of the peace acting after removal from township, or before qualifying.—If any justice of the peace shall act as such after having removed out of his township and not returned for six months, unless re-elected or reappointed, or shall act as such without qualifying as required by law, he shall be guilty of a misdemeanor.—Rev., 3589.

545. Neglect of duty by commissioner.—If any county commissioner shall neglect to perform any duty required of him by law as a member of the board, he shall be guilty of a misdemeanor, and shall also be liable to a penalty of two hundred dollars for each offense, to be paid to any person who shall sue for the same.—Rev., 3590.

546. Nonresident insane person; justice or clerk knowingly committing.—If any clerk or justice of the peace shall knowingly commit to any hospital a person who is not a bona fide citizen and resident of this state, he shall be guilty of a misdemeanor, and, upon conviction, shall be fined or imprisoned at the discretion of the court.—Rev., 3591.

547. Officer failing to discharge duties.—If any clerk of any court of record, sheriff, justice of the peace, county commissioner, county surveyor, coroner, treasurer, constable, or official of any of the state institutions, or of any county, city or town, shall wilfully omit, neglect or refuse to discharge any of the duties of his office, for default whereof it is not elsewhere provided that he shall be indicted, he shall be guilty of a misdemeanor. And if it shall be proved that such officer, after his qualification, shall have wilfully and corruptly omitted, neglected or refused to discharge any of the duties of his said office, or shall have wilfully and corruptly violated his oath of office according to the true intent and meaning thereof, such officer shall be guilty of a misbehaviour in office, and shall be punished by removal therefrom under the sentence of the court as a part of the punishment for the offense; and shall also be fined or imprisoned in the discretion of the court.—Rev., 3592.

Note.—For penalty, acting without bond, see s.

548. Officer failing to discharge duties in regard to pensions.—If any officer or other person shall neglect or refuse to discharge the

duties imposed upon him by law in regard to pensions of Confederate soldiers, he shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court.—Rev., 3593.

549. Officer failing to pay over fines, penalties, etc.—If any officer who receives or collects a fine, penalty or forfeiture in behalf of the state, or any tax imposed on licenses to retailers or wines, cordials, malt or spirituous liquors, and auctioneers, shall not, within thirty days after such reception or collection, pay over and account for the same to the treasurer of the county board of education for the benefit of the fund for common schools in such county, he shall be guilty of embezzlement, and may be punished not exceeding five years in the state's prison, and fined, at the discretion of the court.—Rev., 3594.

550. Officers of public institutions and other enterprises in which state has interest failing to make true report.—If any president or other chief officer of any railroad, canal or other public works of internal improvement in which the state owns an interest, shall fail to make a true report of the affairs of his company, as is required by section four thousand eight hundred and forty; or if any superintendent or other chief officer of any state or public institution, charitable, penal or educational, in which the state has or owns an interest, except the higher educational institutions that are not also charitable, shall fail to make a true report of the affairs of his institution, as is required by section four thousand eight hundred and forty-one, he shall be guilty of a misdemeanor, and be fined not less than one thousand dollars nor more than five thousand dollars, or be imprisoned not less than one nor more than five years at hard labor in the state's prison.—Rev., 3595.

551. Officers ordering females to work in chaingang.—If any officer, either judicial, executive or ministerial, shall order or require the working of any female on the streets or roads in any group or chaingang in this state, he shall be deemed guilty of a misdemeanor.—Rev., 3596.

552. Penalty for failing to make, or for refusing copy of, commitment.—If any person, to whom a writ of habeas corpus is directed, shall neglect or refuse to make due return thereto, or to bring the body of the party detained according to the command of the writ without delay, or shall not, within six hours after demand made therefor, deliver a copy of the commitment or cause of detainer, such person shall, upon conviction on indictment, be fined one thousand dollars, or imprisoned not exceeding twelve months, and if such person be an officer, shall moreover be removed from office.—Rev., 3597.

553. Public laws; custodians of, etc., disposing of, or refusing to deliver to successor.—It shall be the duty of the clerk of the superior court of each county, and every other person to whom the acts of the general assembly, supreme court reports, or other public documents are transmitted or deposited for the use of the county or the state, to safely keep the same in their respective offices; and if any such person having the custody of such books and documents, for the uses aforesaid, shall negligently and wilfully dispose of the same, by sale or otherwise; or refuse to deliver over the same to his successor in office, he shall be guilty of a misdemeanor, and punished by fine or imprisonment, or both, at the discretion of the court.—Rev., 3598.

554. Register of deeds failing to discharge duties.—If any register of deeds fails to perform any of the duties imposed or authorized by law, he shall be guilty of a misdemeanor, and besides other punishments at the discretion of the court, he shall be removed from office.—Rev., 3599.

555. Register of deeds failing to index instruments.—If any register of deeds shall fail to provide and keep in his office full and complete alphabetical indexes of the names of the parties to all liens, grants,

deeds, mortgages, bonds and other instruments of writing required to be registered (said indexes to be kept in well-bound books, and shall state in full the names of all the parties, whether grantors, grantees, vendors, vendees, obligors or obligees, and shall be indexed and cross-indexed, so as to show the name of each party under the appropriate letter of the alphabet, and reference shall be made opposite each name to the page, title or number of the book in which is registered any such lien, deed, bond, conveyance or other instrument), or shall fail within twenty-four hours after registering any such instrument to index the same as above provided, he shall be guilty of a misdemeanor.—Rev., 3600.

556. Refusing to turn over official papers to person adjudged entitled to office.—If a person against whom a judgment has been rendered in an action brought to recover a public office shall fail or refuse to turn over, on demand, to the person adjudged to be entitled to such office, all papers, documents and books belonging to such office, he shall be guilty of a misdemeanor.—Rev., 3601.

557. Sheriff failing to return venire facias.—If any sheriff shall fail to duly execute and return any writ of venire facias, he shall be fined by the court not exceeding one hundred dollars.—Rev., 3602.

558. Sheriff or jailer failing to obey commitment from adjoining county.—If any sheriff or jailer shall refuse to obey any order of commitment made by a justice of the peace or other proper officer of an adjoining county in which there is no jail, or an unfit or insecure jail, he shall be guilty of a misdemeanor.—Rev., 3603.

559. Sheriff or other officer failing to return process.—If any sheriff, constable or other officer, whether state or municipal, or any person who shall presume to act as any such officer, not being by law authorized so to do, refuse or neglect to return any precept, notice, or process, to him tendered or delivered, which it is his duty to execute, or make a false return thereon, he shall forfeit and pay to any one who will sue for the same one hundred dollars, and shall moreover be guilty of a misdemeanor.—Rev., 3604.

560. Swearing falsely to report.—If any clerk, sheriff, register of deeds, county commissioner, county treasurer, justice of the peace, constable, or other county officer, shall wilfully swear falsely to any report or statement required by law to be made or filed, concerning or touching the county, state or school revenue, he shall be guilty of a misdemeanor.—Rev., 3605.

561. Treasurer of state; fraudulent entries and statements by.—If the treasurer of the state shall wittingly or falsely make, or cause to be made, any false entry or charge in any book kept by him as treasurer, or shall wittingly or falsely form, or procure to be formed, any statement of the treasury, to be by him laid before the governor, the general assembly, or any committee thereof, or to be by him used in any settlement which he is required to make with the auditor, with intent, in any of said instances, to defraud the state or any person, such treasurer shall be guilty of a misdemeanor, and fined, at the discretion of the court, not exceeding three thousand dollars, and imprisoned not exceeding three years.—Rev., 3606.

562. Town aldermen failing to appoint inspectors.—If the aldermen or commissioners of any city or town shall fail or refuse to appoint a chief of the fire department, or shall fail or refuse to reasonably remunerate him, they shall be guilty of a misdemeanor. This section shall not apply to the aldermen or commissioners of any city or town, where such city or town is by law exempt from the law regulating and controlling the erection and inspection of buildings.—Rev., 3607.

563. Town officers failing to establish fire limits.—If the aldermen or commissioners of any city or town shall fail or refuse to establish and define the fire limits for such town according to law, they shall be guilty of a misdemeanor. This section shall not apply to aldermen or commissioners of those towns which are exempt from the law governing the inspection of buildings.—Rev., 3608.

564. Town officers failing to pay over taxes monthly.—If any constable or collector of taxes for any town or city, or any other officer, shall fail to make settlement and full return of all moneys, penalties and fines coming into his hands each month with the town or city treasurer, or other officer authorized to receive the same, he shall be guilty of a misdemeanor.—Rev., 3609.

565. Town officers; inspection of buildings.—If any chief of any fire department or local inspector of buildings shall fail to perform the duties required of him by law, or shall give a certificate of inspection without first making the inspection required by law, or shall improperly give a certificate of inspection, he shall be guilty of a misdemeanor. This section shall not apply to towns exempt from the law governing the inspection of buildings.—Rev., 3610.

CHAPTER XXV.

PERJURY.

566. Before legislative committee.—If any person shall wilfully and corruptly swear falsely to any fact material to the investigation of any matter before any committee of either house of the general assembly, he shall be subject to all the pains and penalties of wilful and corrupt perjury, and, on conviction in the superior court of Wake county, shall be confined in the state's prison for the time prescribed by law for perjury.—Rev., 3611.

567. Court-martial.—If any person shall wilfully and corruptly swear falsely before any court-martial, touching and concerning any matter or thing cognizable before such court-martial, he shall be liable to the pains and penalties of perjury.—Rev., 3612.

568. False oath to wrong a laborer.—If any contractor, stevedore or boss stevedore shall make any false oath or false representation with intent to wrong, cheat or defraud any laborer as contemplated in the provisions and purview of the chapter entitled Liens, he shall be guilty of a misdemeanor, and on conviction thereof shall be punished as is now prescribed by law for perjury.—Rev., 3613.

569. Insolvent debtor.—If any insolvent or imprisoned debtor take any oath prescribed in the chapter entitled Insolvent Debtors, falsely and corruptly, and upon indictment of perjury be convicted thereof, he shall suffer all the pains of perjury, and he shall never after have any of the benefits of that chapter, but may be sued and imprisoned as though he had never been discharged.—Rev., 3614.

570. Offense of.—If any person shall wilfully and corruptly commit perjury, in his oath or affirmation, in any suit, controversy, matter or cause, depending in any of the courts of the state, or in any deposition or affidavit taken pursuant to law, or in any oath or affirmation duly administered of or concerning any matter or thing whereof such person is lawfully required to be sworn or affirmed, every person so offending shall be guilty of a misdemeanor and fined not exceeding one thousand dollars, and imprisoned in the county jail or state's prison not less than four months nor more than ten years.—Rev., 3615.

571. Subornation of.—If any person shall, by any means, procure another person to commit such wilful and corrupt perjury as is mentioned in the preceding section, the person so offending shall be punished in like manner as the person committing the perjury.—Rev., 3616.

572. Trust for benefit of creditors; false oath.—If any creditor of the maker of a deed of trust for the benefit of creditors shall knowingly swear falsely in the statement of the amount claimed by him required by law to be filed with the trustee, he shall be guilty of a misdemeanor.—Rev., 3617.

Note.—See Conveyances.

CHAPTER XXVI.

PERSON.

573. Abortion; destroying child; intent.—If any person shall wilfully administer to any woman, either pregnant or quick with child, or prescribe for any such woman, or advise or procure any such woman to take any medicine, drug or substance whatever, or shall use or employ any instrument or other means with intent thereby to destroy said child, unless the same shall have been necessary to preserve the life of such mother, he shall be guilty of a felony, and imprisoned in the state's prison for not less than one year nor more than ten years, and be fined at the discretion of the court.—Rev., 3618.

574. Abortion; destroying woman; intent.—If any person shall administer to any pregnant woman, or prescribe for any such woman, or advise and procure such woman to take any medicine, drug or anything whatsoever, with intent thereby to procure the miscarriage of any such woman, or to injure or destroy such woman, or shall use any instrument or application for any of the above purposes, he shall be guilty of a felony, and imprisoned in the jail or state's prison for not less than one year nor more than five years, and be fined at the discretion of the court.—Rev., 3619.

575. Assault, punishment for.—In all cases of an assault, with or without intent to kill or injure, the person convicted shall be punished by fine or imprisonment, or both, at the discretion of the court: Provided, that where no deadly weapon has been used and no serious damage done, the punishment in assaults, assaults and batteries, and affrays, shall not exceed a fine of fifty dollars or imprisonment for thirty days; but this proviso shall not apply to cases of assault with intent to kill, or with intent to commit rape.—Rev., 3620.

576. Assault in secret manner.—If any person shall maliciously commit an assault and battery with any deadly weapon upon another by waylaying or otherwise, in a secret manner, with intent to kill such other person, he shall be guilty of a felony and punishable by imprisonment in jail or the penitentiary for not less than twelve months nor more than twenty years, or by a fine not exceeding two thousand dollars, or both, in the discretion of the court.—Rev., 3621.

577. Assault; pointing gun.—If any person shall point any gun or pistol at any person, either in fun or otherwise, whether such gun or pistol be loaded or not loaded, he shall be guilty of an assault, and upon conviction of the same shall be fined, imprisoned, or both, at the discretion of the court.—Rev., 3622.

578. Birth of child, concealing.—If any person shall, by secretly burying or otherwise disposing of the dead body of a new-born child, endeavor to conceal the birth of such child, such person shall be guilty of a felony, and punished by fine or imprisonment, or both, such

imprisonment to be in the county jail or state's prison, at the discretion of the court: Provided, that the imprisonment in the state's prison shall in no case exceed a term of ten years: Provided further, that nothing in this section shall be construed to prevent the mother, who may be guilty of the homicide of her child, from being prosecuted and punished for the same according to the principles of the common law. And any person aiding, counseling or abetting any woman in concealing the birth of her child shall be guilty of a misdemeanor.—Rev., 3623.

579. Carnal knowledge of married woman by personating husband.—If any person shall have carnal knowledge of any married woman by fraud in personating her husband, he shall be guilty of a felony, and punished by imprisonment in the state's prison at hard labor not less than ten nor more than twenty years.—Rev., 3624.

580. Carnal knowledge of married woman; attempt.—Every person convicted of an assault upon any married woman, with intent to have knowledge of her by fraud in personating her husband, shall be punished by imprisonment in the state's prison at hard labor not less than five nor more than fifteen years.—Rev., 3625.

581. Castration or maiming without malice aforethought.—If any person shall, on purpose and unlawfully, but without malice aforethought, cut or slit the nose, bite or cut off a nose, lip or ear, or disable any limb or member of any other person, or castrate any other person, or cut off, maim, or disfigure any of the privy members of any other person, with intent to kill, maim, disfigure, disable or render impotent such person, the person so offending shall be imprisoned in the county or state's prison not less than six months nor more than ten years, and fined, in the discretion of the court.—Rev., 3626.

582. Castration with malice.—If any person, of malice aforethought, shall unlawfully castrate any other person, or cut off, maim, or disfigure, any of the privy members of any person, with intent to murder, maim, disfigure, disable, or render impotent such person, the person so offending shall suffer imprisonment in the state's prison for not less than five nor more than sixty years.—Rev., 3627.

583. Dueling; sending, accepting, bearing challenge.—If any person shall send, accept or bear a challenge to fight a duel, though no death ensue, he, and all such as counsel, aid and abet him, shall be guilty of a misdemeanor, and, moreover, be ineligible to any office of trust, honor or profit in the state, any pardon or reprieve notwithstanding.—Rev., 3628.

584. Duel, death in; murder.—If any person fight a duel in consequence of a challenge sent or received, and either of the parties shall be killed, then the survivor, on conviction thereof, shall suffer death; and all their aiders and abettors shall be considered accessories before the fact.—Rev., 3629.

585. Enticing minors out of the state.—If any person shall employ and carry beyond the limits of this state any minor, or shall induce any minor to go beyond the limits of this state for the purpose of employment, without the consent in writing, duly authenticated, of the parent, guardian or other person having authority over such minor, he shall be guilty of a misdemeanor, and on conviction thereof shall be fined not less than five hundred and not more than one thousand dollars for each offense. The fact of the employment and going out of the state of the minor, or of the going out of the state by the minor, at the solicitation of the person for the purpose of employment, shall be prima facie evidence of knowledge that the person employed or solicited to go beyond the limits of the state is a minor.—Rev., 3630.

586. Homicide; murder in the first degree, second degree.—A murder which shall be perpetrated by means of poison, lying in wait, im-

prisonment, starving, torture, or by any other kind of wilful, deliberate and premeditated killing, or which shall be committed in the perpetration or attempt to perpetrate any arson, rape, robbery, burglary or other felony, shall be deemed to be murder in the first degree and shall be punished with death. All other kinds of murder shall be deemed murder in the second degree, and shall be punished with imprisonment of not less than two nor more than thirty years in the state's prison.—Rev., 3631.

587. Homicide: manslaughter.—If any person shall commit the crime of manslaughter he shall be punished by imprisonment in the county jail or state's prison not less than four months nor more than twenty years.—Rev., 3632.

588. Homicide: manslaughter, second offense.—If any person, having been convicted of the crime of manslaughter and sentenced thereon, shall be convicted of a second crime of the like nature, he shall be imprisoned in the state's prison not less than five nor more than sixty years; and in every such case of conviction for such second offense, the prior conviction of the same person and sentence thereon may be shown to the court.—Rev., 3633.

589. Kidnapping.—If any person shall forcibly or fraudulently kidnap any person, he shall be guilty of a felony, and upon conviction may be punished in the discretion of the court, not exceeding twenty years in the state's prison.—Rev., 3634.

590. Libel, communicating, to newspaper.—If any person shall state, deliver or transmit by any means whatever, to the manager, editor, publisher or reporter of any newspaper or periodical for publication therein any false and libelous statement concerning any person or corporation, and thereby secure the publication of the same, he shall be guilty of a misdemeanor.—Rev., 3635.

Note.—For punishment of libel by newspaper, see Libel and Slander.

591. Maiming.—If any person shall, of malice aforethought, unlawfully cut out or disable the tongue or put out an eye of any person, with intent to murder, maim or disfigure, the person so offending, his counselors, abettors and aids, knowing of and privy to the offense, shall, for the first offense, be punished by imprisonment in the state's prison or county jail not less than four months nor more than ten years, and be fined, in the discretion of the court; and for the second offense shall be imprisoned in the state's prison not less than five nor more than sixty years.—Rev., 3636.

592. Rape.—Every person who is convicted of ravishing and carnally knowing any female of the age of ten years or more by force and against her will, or who is convicted of unlawfully and carnally knowing and abusing any female child under the age of ten years, shall suffer death.—Rev., 3637.

593. Rape, assault with intent to commit.—Every person convicted of an assault with intent to commit a rape upon the body of any female, shall be imprisoned in the state's prison not less than five nor more than fifteen years.—Rev., 3638.

594. Rape and buggery: proof.—It shall not be necessary upon the trial of any indictment for the offense of rape, carnally knowing and abusing any female child under ten years of age, and buggery, to prove the actual emission of seed in order to constitute the offense, but the offense shall be completed upon proof of penetration only.—Rev., 3639.

595. Slander of innocent woman.—If any person shall attempt, in a wanton and malicious manner, to destroy the reputation of an innocent woman, by words written or spoken, which amount to a charge of incontinency, every person so offending shall be guilty of a misdemeanor.—Rev., 3640.

CHAPTER XXVII.

PROFESSIONS.

596. Clerks, justices, etc., practicing law.—If any clerk of the superior or supreme court, or any deputy or assistant clerk of said court, or any justice of the peace, or any county commissioner, shall practice law in any of the state courts. he shall be guilty of a misdemeanor and fined not less than two hundred dollars.—Rev., 3641.

597. Dentistry; practicing, without license.—If any person shall practice dentistry, except extracting teeth, without having first passed the examination and obtained the certificate provided by law, he shall be guilty of a misdemeanor, and fined twenty-five dollars: Provided, that if any person shall, after having been once convicted of practicing dentistry contrary to the provisions of said section three thousand six hundred and forty-two, practice dentistry in violation of the provisions of said section three thousand six hundred and forty-two, upon conviction thereof, for the second offense, and each succeeding offense, he shall be guilty of a misdemeanor and be fined and imprisoned in the discretion of the court: Provided, any person so convicted shall not be entitled to sue for or recover any fee or charge for dental service in any court, and any sum of money paid to a person so convicted for dental services rendered may be recovered by the person so paying the same, or his legal representative: Provided further, no one applying for a license to practice dentistry shall be denied such license on account of race, color or previous condition of servitude.—Rev., 3642; Laws 1907, c. 431.

598. Dentistry; falsely claiming to hold license.—If any person shall knowingly and falsely claim or pretend to have or hold a certificate of proficiency granted by the board of examiners of the North Carolina Dental Society, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars nor less than twenty-five dollars for each offense.—Rev., 3643.

599. Embalming without license.—If any person shall practice or hold himself out as practicing the art of embalming, without having complied with the provisions of the law as to license, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty nor more than one hundred dollars for each offense.—Rev., 3644.

600. Medicine; practicing, without license.—If any person shall practice medicine or surgery in this state for fee or reward, without first having obtained license from the board of examiners of the medical society of North Carolina, he shall not only not be entitled to sue for or recover before any court any medical bill for services rendered in the practice of medicine or surgery, or any of the branches thereof, but shall also be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred dollars, or imprisoned, at the discretion of the court, for each and every offense: Provided, that this section shall not be construed to apply to women who pursue the vocation of midwife: And provided further, that this section shall not apply to any reputable physician or surgeon resident in a neighboring state coming into this state for consultation with a registered physician resident herein. But this proviso shall not apply to physicians resident in a neighboring state regularly practicing in this state: Provided, that this section shall not apply to physicians who have a diploma from a regular medical college and were practicing medicine and surgery in this state prior to the seventh day of March, one thousand eight hundred and eighty-five.—Rev., 3645.

601. Medicine; practicing without registering.—If any person shall practice or attempt to practice medicine or surgery in this state without first having registered and obtained the certificate from the clerk of the superior court as required by law, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred dollars, or be imprisoned at the discretion of the court, for each and every offense: Provided, this section shall not apply to women pursuing the vocation of midwife, nor to reputable physicians or surgeons resident in a neighboring state coming into this state for consultation with a registered physician of this state.—Rev., 3646.

602. Medicine; clerk of superior court registering doctor of, illegally.—If any clerk of the superior court shall register, or issue a certificate to, any person practicing medicine or surgery in any other manner than that prescribed by law, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred dollars and shall be removed from office.—Rev., 3647.

603. Pharmacy; adulterating drugs.—If any person engaged in the sale of drugs, chemicals or medicines shall intentionally adulterate, or cause to be adulterated, or exposed to sale, knowing the same to be adulterated, any drugs, chemicals or medical preparations, he shall be guilty of a misdemeanor and liable to a fine not exceeding one hundred dollars, and in addition thereto his name shall be stricken from the register of license pharmacists, provided he be a licensed pharmacist.—Rev., 3648.

604. Pharmacists compounding prescriptions without license.—If any person, not being licensed as a pharmacist, shall compound, dispense or sell at retail any drug, medicine, poison or pharmaceutical preparation, either upon a physicians prescription or otherwise, and any person being the owner or manager of a drug store, pharmacy or other place of business, who shall cause or permit any one not licensed as a pharmacist to dispense, sell at retail or compound any drug, medicine, poison or physician's prescription contrary to the provision of chapter ninety-five, subchapter Pharmacists, he shall be deemed guilty of a misdemeanor, and fined not less than twenty-five nor more than one hundred dollars.—Rev., 3649.

605. Pharmacist doing business without license.—If any person, not being licensed as a pharmacist, shall conduct or manage any drug store, pharmacy or other place of business for the compounding, dispensing or sale at retail of any drugs, medicines or poisons, or for the compounding of any physicians' prescriptions contrary to the provisions of chapter ninety-five, subchapter Pharmacists, he shall be deemed guilty of a misdemeanor, and be fined not less than twenty-five nor more than one hundred dollars, and each week such drug store or pharmacy or other place of business is so unlawfully conducted shall be held to constitute a separate and distinct offense.—Rev., 3650.

606. Pharmacist not displaying license.—If any person, being the holder of a license or permit granted under the provisions of chapter ninety-five, subchapter Pharmacists, shall fail to expose such license or permit, or renewal thereof, in a conspicuous position in the place of business to which such permit or license relates, or in which the holder thereof is employed, contrary to the provisions of such subchapter, he shall be guilty of a misdemeanor, and fined not less than five nor more than twenty-five dollars, and each day that such license, permit, or renewal thereof shall not be exposed shall be held to constitute a separate and distinct offense.—Rev., 3651.

607. Pharmacist, not licensed, using title.—If any person, not being legally licensed as a pharmacist, shall take, use or exhibit the title of

pharmacist, licensed or registered pharmacist, druggist, apothecary, or any other title, name or description of like import, contrary to the provisions of section four thousand four hundred and eighty-six, he shall be guilty of a misdemeanor, and be fined not less than twenty-five nor more than one hundred dollars.—Rev., 3652.

608. Pharmacist not renewing license.—If any person, being a holder of a license or permit granted under chapter ninety-five, subchapter Pharmacists, shall, after the expiration of such license or permit, and, without renewing the same, continue to carry on the business for which such license or permit was granted, contrary to the provisions of section four thousand four hundred and eighty-four, he shall be guilty of a misdemeanor, and fined not less than five nor more than twenty-five dollars.—Rev., 3653.

609. Pharmacist obtaining license fraudulently.—If any person shall make any fraudulent or false representations for the purpose of procuring a license or permit, or renewal thereof, either for himself or for another, he shall be guilty of a misdemeanor, and fined not less than twenty-five nor more than one hundred dollars, and if any person shall wilfully make a false affidavit or any other false or fraudulent representation for the purpose of procuring a license or permit, or renewal thereof, either for himself or for another, he shall be deemed guilty of perjury, and upon conviction thereof be subject to like punishment as is now prescribed for the crime of perjury.—Rev., 3654.

610. Selling poison without label.—If any person shall sell or deliver to any person any poisonous substance specified in section three thousand eight hundred and twenty-nine or section three thousand nine hundred and seventy (a), without labeling the same and recording the delivery thereof in the manner prescribed in said section, he shall be guilty of a misdemeanor, and fined not less than twenty-five nor more than one hundred dollars.—Rev., 3655.

611. Trained nurse, acting as, illegally.—If any person shall procure license as a trained nurse by false representation, or shall refuse to surrender a license which has been duly revoked in the manner prescribed by law, or shall use the title "Registered Nurse" or "R. N." without first obtaining the license to do so, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not exceeding thirty days.—Rev., 3656.

CHAPTER XXVIII.

PRISONERS AND CONVICTS.

612. Breaking prison.—If any person shall break prison, being lawfully confined therein, he shall be guilty of a misdemeanor.—Rev., 3657.

613. Escape.—If any prisoner, who shall be removed from the prisons of the respective counties, cities and towns under the law providing for hiring prisoners, shall escape from the person or company having him in custody, he shall be guilty of a misdemeanor, and imprisoned at hard labor not more than thirty days, or fined not more than fifty dollars.—Rev., 3658.

614. Escape of, permitting, or maltreating.—If any person charged in any way with the control or management of convicts, hired for service outside of the state's prison, shall negligently permit them to escape, or shall maltreat them, he shall be guilty of a misdemeanor; but this provision shall not be held to relieve any person from any criminal liability.—Rev., 3659.

615. In improper apartments.—If the sheriff or jailer shall wantonly or unnecessarily confine those committed to his custody in any apartment, other than that provided and designated by law for persons of the description of the prisoner, he shall be guilty of a misdemeanor.—Rev., 3660.

616. Injury to, by jailer.—If the keeper of a jail shall do, or cause to be done, any wrong or injury to the prisoners committed to his custody, contrary to law, he shall not only pay treble damages to the person injured, but shall be guilty of a misdemeanor.—Rev., 3661.

617. Messages and weapons, conveying to.—If any person shall convey to or from any convict any letters or oral messages, or shall convey to him any weapon or instrument by which to effect an escape, or that will aid him in an assault or insurrection, or shall trade with a convict for his clothing or stolen goods, or shall sell to him any article forbidden him by prison rules, he shall be guilty of a misdemeanor: Provided, when murder, an assault or an escape is effected, with means furnished the convicts, the person convicted of furnishing the means shall be sentenced to not less than four years hard labor in the state's prison.—Rev., 3662.

^ Note.—Working female convicts on roads, see s. 551. For provisions as to prisoners having tuberculosis, see chapter on County Prisons—Laws 1907, c. 567.

CHAPTER XXIX.

PROPERTY.

618. Contractor failing to furnish owner indebtedness for labor and materials.—If any contractor or architect shall fail to furnish to the owner an itemized statement of the sums due to every one of the laborers, mechanics or artisans employed by him, or the amount due for materials, before receiving any part of the contract price, he shall be guilty of a misdemeanor.—Rev., 3663.

619. Crop, tenant's, seized by landlord.—If any landlord shall unlawfully, wilfully, knowingly and without process of law, and unjustly seize the crop of his tenant when there is nothing due him, he shall be guilty of a misdemeanor.—Rev., 3664.

620. Crop, removal of, by tenant.—If any lessee or cropper, or the assigns of either, or any other person, shall remove a crop, or any part thereof, from land without the consent of the lessor or his assigns, and without giving him or his agent five days notice of such intended removal, and before satisfying all the liens held by the lessor or his assigns, on said crop, he shall be guilty of a misdemeanor.—Rev., 3665.

620a. Electrical power transmission lines.—It shall be unlawful for any person within the state of North Carolina wilfully and wantonly, and without the consent of the owner, to take down, remove, injure, obstruct, displace or destroy any line erected or constructed for the transmission of electrical current, or any poles, towers, wires, conduits, cables, insulators or any support upon which wires or cables may be suspended, or any part of any such line or appurtenances or apparatus connected therewith, or to sever any wire or cable thereof, or in any manner to interrupt the transmission of electrical current over and along any such line, or to take down, remove, injure or destroy any house, shop, building or other structure or machinery connected with or necessary to the use of any line erected or constructed for the transmission of electrical current, and to wantonly or wilfully cause

injury to any of the property mentioned in this section by means of fire; and any person or persons violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than five hundred dollars or imprisoned not longer than one year, or both fined or imprisoned, in the discretion of the court.—Laws 1907, c. 919.

621. Electric and steam appliances protected.—If any person shall wilfully, with intent to injure or defraud, commit any of the acts set forth in the following subsections, he shall be guilty of a misdemeanor:

1. Connect a tube, pipe, wire, or other instrument or contrivance with a pipe or wire used for the conducting or supplying illuminating gas, fuel, natural gas, or electricity in such a manner as to supply such gas or electricity to any burner, orifice, lamp or motor where the same is or can be burned or used without passing through the meter or instrument provided for registering the quantity consumed; or,

2. Obstruct, alter, injure or prevent the action of a meter or other instrument used to measure or register the quantity of illuminating fuel, natural gas or electricity consumed in a house or apartment, or at an orifice or burner, lamp or motor, or by a consumer or other person other than an employee of the company owning any gas or electric meter, who wilfully shall detach or disconnect such meter, or make or report any test of, or examine for the purpose of testing any such meter so detached or disconnected; or,

3. In any manner whatever change, extend or alter any service or other pipe, wire or attachment of any kind, connecting or through which natural or artificial gas or electricity is furnished from the gas mains or pipes of any person, without first procuring from said person written permission to make such change, extension or alterations; or,

4. Make any connection or reconnection with the gas mains, service pipes or wires of any person, furnishing to consumers natural or artificial gas or electricity, or turn on or off or in any manner interfere with any valve or stop-cock or other appliances belonging to such person, and connected with its service or other pipes or wires, or enlarge the orifice of mixers, or uses natural gas for heating purposes except through mixers, or electricity for any purpose without first procuring from such person a written permit to turn on or off such stop-cock or valve, or to make such connection or reconnections, or to enlarge the orifice of mixers, or to use for heating purposes without mixers, or to interfere with the valves, stop-cocks, wires, or other appliances of such, as the case may be; or,

5. Retain possession of or refuse to deliver any mixer, meter, lamp, or other appliances which may be leased or rented to them by any person, for the purpose of furnishing gas, electricity or power through the same, or who sells, loans or in any manner disposes of the same to any person other than the said person entitled to the possession of the same; or,

6. Set on fire any gas escaping from wells, broken or leaking mains, pipes, valves or other appliances used by any person in conveying gas to consumers, or interfere in any manner with the wells, pipes, mains, gate-boxes, valves, stop-cocks, wires, cables, conduits, or any other appliances, machinery or property of any person engaged in furnishing gas to consumers, unless employed by or acting under the authority and direction of such person; or,

7. Open or cause to be opened, or reconnect, or cause to be reconnected any valve lawfully closed or disconnected by a district steam corporation; or,

8. Turn on steam or cause it to be turned on, or re-enter any premises when the same has been lawfully stopped from entering such premises.—Rev., 3666.

622. Engines, boilers, machinery; tampering with.—If any person shall wilfully turn out water from any boiler or turn the bolts of any engine or boiler, or meddle or tamper with such boiler or engine, or any other machinery in connection with any boiler or engine, causing loss, damage, danger, or delay to the owner in the prosecution of his work, he shall be guilty of a misdemeanor.—Rev., 3667.

623. Fairs; injuring exhibits at; indictment.—If any person, without license of the owner, or any agricultural or other society, shall unlawfully carry away, remove, destroy, mar, deface, or injure anything, animate or inanimate, while on exhibition on the grounds of any such society, or going to or returning from the same, he shall be guilty of a misdemeanor. It shall be sufficient in any indictment for any such offense, or for the larceny of any such thing, animate or inanimate as aforesaid, to charge that the thing so carried away, destroyed, marred, injured, or feloniously stolen, is the property of the society to which the said thing shall be forwarded for exhibition.—Rev., 3668.

Note.—For fraudulent entries at fairs, see s. 376.

624. Fair grounds, unlawfully entering.—If any person, after having been expelled from the fair grounds of any agricultural or horticultural society, shall offer to enter the same again without permission from such society; or if any person shall break over the enclosing structure of said fair grounds and enter the same, or shall enter the enclosure of said fair grounds by means of climbing over, under or through the enclosing structure surrounding the same, or shall enter the enclosure through the gates without the permission of its gate-keeper or the proper officer of said fair association, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars, or imprisoned not more than thirty days.—Rev., 3669.

625. Forcible entry and detainer.—No one shall make entry into any lands and tenements, or term for years, but in case where entry is given by law; and in such case, not with strong hand nor with multitude of people, but only in a peaceable and easy manner; and if any man do the contrary, he shall be guilty of a misdemeanor.—Rev., 3670.

626. Gas company; injuring machinery, fixtures, etc.—If any person shall wilfully, wantonly or maliciously remove, obstruct, injure or destroy any part of the plant, machinery, fixtures, structures or buildings, or anything appertaining to the works of any gas company, or shall use, tamper or interfere with the same, he shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not more than thirty days for such offense, and such person shall also forfeit and pay to the company so injured, to be sued for and recovered in a civil action, double the amount of the damages sustained by any such injury.—Rev., 3671.

627. Graves, disturbing.—If any person shall, without due process of law, or the consent of the surviving husband or wife, or the next of kin of the deceased, and of the person having the control of such grave, open any grave for the purpose of taking therefrom any such dead body, or any part thereof buried therein, or anything interred therewith, he shall be guilty of a felony, and upon conviction thereof shall be fined or imprisoned, or both, at the discretion of the court.—Rev., 3672.

628. Houses, churches, fences, walls; injuries to.—If any person shall, by any other means than burning or attempting to burn, unlawfully and wilfully demolish, destroy, deface, injure, or damage any of the houses or buildings previously mentioned in this chapter; or shall unlawfully and wilfully burn, demolish, pull down, destroy, deface, damage, or injure any church, uninhabited house, outhouse, or other house or building not mentioned before in this chapter; or shall unlaw-

fully and wilfully burn, destroy, pull down, injure, or remove any fence, wall, or other inclosure, or any part thereof surrounding or about any yard, garden, cultivated field or pasture, or about any church, graveyard, factory, or other house in which machinery is used, every person so offending shall be guilty of a misdemeanor.—Rev., 3673.

629. Landmarks, altering or removing.—If any person shall wilfully or fraudulently remove, alter or deface any landmark, in anywise whatsoever, such person shall be guilty of a misdemeanor. This section shall not apply to such landmarks as creeks and other small streams, which the interest of agriculture may require to be altered or turned from their channels.—Rev., 3674.

630. Live stock, shipping, on Scuppernong river.—If any transportation company or common carrier shall receive live stock for shipment at any of the landing or shipping points on Scuppernong river, Columbia excepted, between the hours of sunset and sunrise, or shall during the time any live stock may be held for shipment at any landing or shipping point on said river, Columbia excepted, fail to keep the same in a covered pound or inclosure, supplied with necessary food and drinking water, and at all times in full view of the public, such transportation company, common carrier, or the agent of either, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, at the discretion of the court.—Rev., 3675.

631. Malicious injury to personal property.—If any person shall wantonly and wilfully injure the personal property of another, he shall be guilty of a misdemeanor, whether the property be destroyed or not, and shall be punished by fine or imprisonment, or both, in the discretion of the court.—Rev., 3676.

632. Malicious injury to real property.—If any person shall maliciously commit any damage, injury or spoil upon any real property whatsoever, either of a public or private nature, for which no punishment is provided by any existing law, every person so offending shall be guilty of a misdemeanor: Provided, that nothing herein shall extend to any case where the party trespassing or doing the injury acted under a fair and reasonable belief that he had a right to do the act complained of, nor to any trespass, not being wilful and malicious, committed in hunting, fishing or the pursuit of game. When the owner, or one of the owners of an estate in possession, shall complain of the injury before a justice of the peace of the county in which the offense is charged to have been committed before the regular term of the superior court next after the commission of the offense, and shall fail to state in his complaint that the damage exceeds ten dollars, the punishment, upon conviction of the offense, shall not exceed a fine of fifty dollars or imprisonment for thirty days.—Rev., 3677.

633. Milldams, injuries to.—If any person shall cut away, destroy, or otherwise injure any dam, or part thereof, or shall obstruct or damage any race, canal, or water channel erected, opened, used, or constructed for the purpose of furnishing water for the operation of any mill, factory, or machine works, or for the escape of water therefrom, he shall, upon conviction, be fined or imprisoned, or both, at the discretion of the court.—Rev., 3678.

634. Mills, false toll-dishes.—If any owner, by himself or servant, keeping any mill, shall keep any false toll-dishes, he shall be guilty of a misdemeanor.—Rev., 3679.

635. Monuments and tombstones; defacing or removing.—If any person shall, unlawfully and on purpose, remove from its place any monument of marble, stone, brass, wood or other material, erected for the purpose of designating the spot where any dead body is interred, or for the purpose of preserving and perpetuating the memory, name,

fame, birth, age or death of any person, whether situated in or about the common burying-ground, or shall unlawfully or on purpose break or deface such monument, or alter the letters, marks or inscription thereof, he shall be guilty of a misdemeanor.—Rev., 3680.

636. Moving enclosures of graveyards.—If any person shall unlawfully take away any stone, brick, iron or anything that encloses private graveyards, he shall be guilty of a misdemeanor, and on conviction, shall be fined not more than ten dollars or imprisoned not more than thirty days.—Rev., 3681.

637. Possession; surrendering, to other than landlord.—Any tenant or lessee of lands who shall wilfully, wrongfully and with intent to defraud the landlord or lessor, give up the possession of the rented or leased premises to any person other than his landlord or lessor, shall be guilty of a misdemeanor.—Rev., 3682.

638. Removing dog-tongue, etc., in certain counties.—If any person shall enter upon and remove from the lands of any other person, without first obtaining permission from the landowner, any dog-tongue (or vanilla, whortleberries or other fruits, or any other marketable product of the soil, he shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than five dollars nor more than fifty dollars for each offense, or imprisoned not more than thirty days: Provided, that this section shall apply to the counties of Sampson and Duplin only.—Rev., 3683.

639. Surveyor's chain tested.—If any person who shall use any chain for measuring land without first having the same measured and sealed by the standard-keeper, or who shall use the same for a longer period than two years without bringing it to the standard-keeper and having the same measured and sealed by him, he shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding ten dollars.—Rev., 3684.

640. Taking unlawful possession of another's house.—If any person shall enter upon the lands of another and take possession of any house or building being thereon, without permission of the owner or agent and without a bona fide claim of right or title so to enter and take possession, and shall fail or refuse to vacate said premises within ten days after being notified personally in writing to quit said premises, he shall be guilty of a misdemeanor and fined or imprisoned at the discretion of the court.—Rev., 3685.

641. Tenant injuring houses, fences, trees, etc.—If any tenant shall, during his term or after its expiration, wilfully and unlawfully demolish, destroy, deface, injure or damage any tenement house, uninhabited house, or other outhouse, belonging to his landlord or upon his premises, by removing parts thereof or by burning, or in any other manner, or shall unlawfully and wilfully burn, destroy, pull down, injure or remove any fence, wall or other inclosure or any part thereof, built or standing upon the premises of such landlord, or shall wilfully and unlawfully cut down or destroy any timber, fruit, shade or ornamental tree belonging to said landlord, he shall be guilty of a misdemeanor.—Rev., 3686.

642. Timber, cutting or removing, from land of another.—If any person, not being the bona fide owner thereof, shall knowingly and wilfully cut down, injure or remove any standing, growing, or fallen tree or log, the property of another, he shall be guilty of a misdemeanor and punished by a fine of not more than fifty dollars or imprisoned not more than thirty days.—Rev., 3687.

643. Trespass on land after being forbidden; license to look for estrays.—If any person, after being forbidden to do so, shall go or enter upon the lands of another, without license therefor, he shall be

guilty of a misdemeanor, and, on conviction, shall be fined not exceeding fifty dollars, or imprisoned not more than thirty days: Provided, that if any person shall make a written affidavit before a justice of the peace of the county that any of his cattle or other live stock (which shall be specially described and set forth in such affidavit) have strayed away, and he has good reason to believe that they are on the lands of another person, then such justice may, in his discretion, allow such person to enter on said premises with one or more servants, without firearms, in the day time (Sunday excepted), between the hours of sunrise and sunset, and make search for his estrays for such limited time as to the said justice shall appear reasonable; but the only effect of such license shall be to protect the persons entering from indictment therefor, and then only provided the license shall have been made bona fide, and without any damages except such as were necessary to conduct the search.—Rev., 3688.

644. Trustee in deed of trust for creditors violating duty.—If any trustee in a deed of trust for the benefit of creditors shall fail to file his inventory as required by law, or shall knowingly make any false statement in such inventory, or shall knowingly fail to include any property therein, or shall sell any part of the property described in the deed of trust within ten days, unless such property so sold be perishable, or shall fail to file either of the quarterly accounts or the final accounts as required by law, or shall knowingly make any false statement in such quarterly or final account, or shall knowingly fail to include any property, money or disbursement in such quarterly or final account, he shall, in either case, be guilty of a misdemeanor.—Rev., 3689.

Note.—See Conveyances, subchapter Deeds of Trust for Creditors.

CHAPTER XXX.

PUBLIC JUSTICE.

645. Corporations, agents of, refusing certain demands by officer with execution for service.—If any agent or person having charge or control of any property of a corporation, or any clerk, cashier, or other officer of a corporation, who has at the time the custody of the books of a company, or if any agent or person having custody of any evidence of debt due to a corporation, shall, on request of a public officer having in his hands for service an execution against the said corporation, wilfully refuse to give to such officer the names of the directors and officers thereof, and a schedule of all its property, including debts due or to become due, or shall wilfully refuse to give to such officer a certificate of the number of shares, or amount of interest held by such corporation in any other corporation, or shall wilfully refuse to deliver to such officer any evidence of indebtedness due or to become due to such corporation, he shall be guilty of a misdemeanor.—Rev., 3690.

646. Corporation commission, witnesses before.—If any person duly summoned to appear and testify before the corporation commission shall fail or refuse to testify without lawful excuse, or shall refuse to answer any proper question propounded to him by said commission in the discharge of duty, or shall conduct himself in a rude, disrespectful or disorderly manner before said commission, or any of them deliberating in the discharge of duty, such person shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty nor more than one thousand dollars.—Rev., 3691.

647. General assembly; failure to attend as witness before committee of.—If any person shall wilfully fail or refuse to attend or produce papers, or summons of any committee of investigation of either house of the general assembly, either select or committee of the whole, he shall be guilty of a misdemeanor, and on conviction in the superior court of the county in which such witness may reside or be found, he shall be fined not less than five hundred dollars nor more than one thousand dollars, and imprisoned, at the discretion of the court.—Rev., 3692.

648. Internal improvements, witnesses before board of.—If any person shall refuse to obey any summons of, or answer any questions when required so to do by a member of the board of internal improvements, who is making an investigation as authorized by law, he shall be guilty of a misdemeanor.—Rev., 3693.

649. Insane person; aiding, to escape from hospital.—If any person shall assist any inmate of a state hospital to escape therefrom, he shall be guilty of a misdemeanor.—Rev., 3694.

650. Insane; violation of ordinance of hospital.—If any person shall violate any ordinance adopted by the board of directors of any state hospital for the insane, or of the North Carolina school for the deaf and dumb, or the deaf, dumb and blind, he shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days.—Rev., 3695.

651. Jurors and witnesses, intimidating.—If any person shall by threats, menaces, or in any other manner, intimidate or attempt to intimidate any person who is summoned or acting as a juror or witness in any of the courts of this state, or prevent or deter, or attempt to prevent or deter any person summoned or acting as such juror or witness from attendance upon such court, he shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned in the discretion of the court.—Rev., 3696.

652. Jurors, bribery of.—If any juror, either directly or indirectly, shall take anything from the plaintiff or defendant in a civil suit, or from any defendant in a state prosecution, or from any other person, to give his verdict, every such juror, and the person who shall give such juror any fee or reward to influence his verdict, or induce or procure him to make any gain or profit by his verdict, shall be guilty of a felony, and imprisoned in the state's prison or county jail not less than four months nor more than ten years.—Rev., 3697.

653. Lynching.—If any person shall conspire to break or enter any jail or other place of confinement of prisoners charged with crime or under sentence, for the purpose of killing or otherwise injuring any prisoner confined therein; or if any person shall engage in breaking or entering any such jail or other place of confinement of such prisoners with intent to kill or injure any prisoners, he shall be guilty of a felony, and upon conviction, or upon a plea of guilty, shall be fined not less than five hundred dollars, and imprisoned in the state's prison or the county jail not less than two nor more than fifteen years.—Rev., 3698.

654. Lynching; witness refusing to appear and testify.—If any person be summoned as a witness in the investigation of a charge of lynching and shall wilfully fail to attend as a witness in obedience to the process served on him, or if, after being sworn, he refuse to answer questions pertinent to the matter being investigated before any tribunal, he shall be guilty of a misdemeanor, and, on conviction, shall be fined or imprisoned, or both, at the discretion of the court.—Rev., 3699.

655. Officers, resisting.—If any person shall wilfully and unlawfully resist, delay or obstruct a public officer in discharging or attempting

to discharge a duty of his office, he shall be guilty of a misdemeanor.—Rev., 3700.

656. Officer; refusing to aid, in arrest.—If any person, after having been lawfully commanded to aid an officer in arresting any person, or in retaking any person who has escaped from legal custody, or in executing any legal process, wilfully neglects or refuses to aid such officers, he shall be guilty of a misdemeanor.—Rev., 3701.

657. Town ordinance, violation of.—If any person shall violate an ordinance of a city or town, he shall be guilty of a misdemeanor, and shall be fined not exceeding fifty dollars, or imprisoned not exceeding thirty days.—Rev., 3702.

CHAPTER XXXI.

PUBLIC PEACE.

658. Armed men in bodies as detectives.—If any body of men composed of more than three persons calling themselves detectives, or claiming to be in the employ of any detective agency, or known and designated as detectives, shall go armed, they shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned in the discretion of the court.—Rev., 3703.

659. Disturbing certain meetings.—If any person shall wilfully interrupt or disturb any picnic, excursion party, school entertainment, political meeting, or any meeting or other organization whatsoever lawfully and peacefully held, either at, within or without the place where such picnic, excursion party, school entertainments, political meetings, or any meetings or other organization is held, he shall be guilty of a misdemeanor, and fined or imprisoned, in the discretion of the court.—Rev., 3704.

660. Disturbing religious assembly by certain exhibitions.—If any person shall bring within half a mile of any place where the people are assembled for divine worship, and stop for exhibition any stud-horse or jack, or shall bring within that distance any natural or artificial curiosities, and there exhibit them, he shall forfeit and pay to any one who will sue therefor the sum of twenty dollars, and shall also be guilty of a misdemeanor: Provided, that nothing herein shall be construed to prohibit such exhibitions at any time, if made within the limits of any incorporated town, or without such limits, if made before the hour of ten o'clock in the forenoon, or after three o'clock in the afternoon.—Rev., 3705.

Exception as to Hatteras township, Dare county, 1907, c. 412.

661. Disturbing religious congregation.—If any person shall be intoxicated, or shall be guilty of any rude and disorderly conduct at any place where people are accustomed to meet for divine worship, and while the people are there assembled for such worship, whether such worship should have begun or not, he shall be guilty of a misdemeanor, and shall, upon conviction, be fined or imprisoned in the discretion of the court.—Rev., 3706.

662. Prize-fighting; engaging in, betting on, aiding and abetting.—If any two or more persons engage in a prize-fight, or sparring match, or glove or fist contest, for money or other valuable prize or stake; or if any person bet or lay a wager on the result thereof; or advise, aid or abet in any way whatever in promoting the same, he shall be fined not less than five hundred dollars, or imprisoned in the state's prison or jail for not less than one year nor more than five years, or both, in the discretion of the court.—Rev., 3707.

663. Weapons, carrying concealed.—If any one, except when on his own premises, shall carry concealed about his person any pistol, bowie-knife, dirk, dagger, slungshot, loaded cane, brass, iron or metallic knuckles, or razor or other deadly weapon of like kind, he shall be guilty of a misdemeanor, and fined or imprisoned at the discretion of the court. And if any one, not being on his own lands, shall have about his person any such deadly weapon, such possession shall be prima facie evidence of the concealment thereof. This section shall not apply to the following persons: Officers and soldiers of the United States army, civil officers of the United States while in the discharge of their official duties, officers and soldiers of the militia and the state guard when called into actual service, officers of the state, or of any county, city or town, charged with the execution of the laws of the state, when acting in the discharge of their official duties.—Rev., 3708.

Note.—Hampton's Detective Bureau exempt in Buncombe county.

CHAPTER XXXII.

PUBLIC POLICE.

664. Advertisements, injury to.—If any person shall wantonly or maliciously mutilate, deface, pull or tear down, destroy or otherwise damage any notice, sign or advertisement, unless immoral or obscene, whether put up by an officer of the law in performance of the duties of his office or other person for a lawful purpose, before the object for which such notice, sign or advertisement shall have been posted shall have been accomplished, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding twenty-five dollars or imprisoned not exceeding thirty days at the discretion of the court. Nothing herein contained shall apply to any person mutilating, defacing, pulling or tearing down, destroying or otherwise damaging notices, signs or advertisements put up on his own land or lands of which he may have charge or control, unless consent of such person to put up such notice, sign or advertisement shall have first been obtained, except those put up by an officer of the law in the performance of the duties of his office.—Rev., 3709.

665. Advertisements, defacing.—If any person shall wilfully and unlawfully deface, tear down, remove or destroy any legal notice or advertisement authorized by law to be posted by any officer or other person, the same being actually posted at the time of such defacing, tearing down, removing or destruction, during the time for which such legal notice or advertisement shall be authorized by law to be posted, he shall be guilty of a misdemeanor, and fined not exceeding fifty dollars, or imprisoned not exceeding thirty days.—Rev., 3710.

666. Bills, etc., unauthorized, issued to circulate as money.—If any person or corporation, unless the same be expressly allowed by law, shall issue any bill, due bill, order, ticket, certificate of deposit, promissory note or obligation, or any other kind of security, whatever may be its form or name, with the intent that the same shall circulate or pass as the representative of, or as a substitute for, money, he shall forfeit and pay for each offense the sum of fifty dollars; and if the party offending be a corporation, it shall also forfeit its charter. And every person offending against this section, or aiding or assisting therein, shall be guilty of a misdemeanor.—Rev., 3711.

667. Bills, etc., unauthorized, passing as money.—If any person or corporation shall pass or receive, as the representative of, or as the substitute for, money, any such bill, check, certificate, promissory note,

or other security of the kind mentioned in preceding section, whether the same were issued within or without the state, such person or corporation, and the officers and agents of such corporation aiding therein, who shall offend against this section shall for every such offense forfeit and pay five dollars, and shall be guilty of a misdemeanor.—Rev., 3712.

668. Crop pests; preventing inspection.—If any one shall seek to prevent inspection of his premises as provided in law for extermination of crop pests, or shall otherwise interfere with any agent of the commission or the board of agriculture while in performance of his duties, he shall, upon conviction, be fined not less than five nor more than fifty dollars for each offense, or may be imprisoned for not less than ten nor more than thirty days.—Rev., 3713; Laws 1907, c. 876.

669. Ginseng; digging, between April and September.—If any person dig ginseng, except on his own premises, or for the purpose of replanting the same, between the first day of April and the first day of September, he shall forfeit and pay the sum of ten dollars for each day or part of a day's digging, and shall also be guilty of a misdemeanor.—Rev., 3714.

Note.—For larceny of ginseng, see s. 454.

670. Gambling.—If any person play at any game of chance at which money, property or other thing of value is bet, whether the same be in stake or not, both those who play and those who bet thereon shall be guilty of a misdemeanor.—Rev., 3715.

Note.—For dealing in futures, see ss. 792—795.

671. Gambling; allowing, in house where liquor sold; duty of police officers; penalty.—If any keeper of an ordinary, or house of entertainment, or of a house wherein liquors are retailed, shall knowingly suffer any game, at which money or property, or anything of value is bet, whether the same be in stake or not, to be played in any such house, or in any part of the premises occupied therewith; or shall furnish persons so playing or betting, either on said premises or elsewhere, with drink or other thing for their comfort or subsistence during the time of play, he shall be guilty of a misdemeanor, and fined not less than five hundred dollars, and be imprisoned not less than six months. Any person who shall be convicted under this section shall, upon such conviction, forfeit his license to do any of the businesses mentioned in this section, and shall be forever debarred from doing any of the said businesses in this state, and the court shall embody in its judgment that such person has forfeited his said license, and no board of county commissioners, board of town commissioners, or board of aldermen shall hereafter have power or authority to grant to such convicted person or his agent a license to do any of the businesses mentioned herein. It shall be the duty of every police officer of the cities, towns and villages of this state to make diligent inquiry and to exercise constant watchfulness to discover whether any of the offenses enumerated in said section are being committed, and to report once a week under oath to the mayor or other chief officer of his city, town or village, whether such offenses are being committed, and all the facts within his knowledge, or of which he has information relating thereto, and if any such police officer shall know or have information that such offenses are being committed and shall fail or neglect to report the same to such mayor or chief officer, together with all the information known to him, as to the person or persons committing the same, the time and place of the commission, and the names of the witnesses thereto, he shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court, and shall forfeit his office. And it shall be the duty of such mayor or chief officer to require the said report herein provided

for, and to require that the same shall be verified by the oath of such policeman, and if it appear upon such reports that any of the said offenses have been committed, it shall be the duty of such mayor or chief officer to issue his warrant for the arrest of the offender. Any such mayor or chief officer of any of the said cities, towns or villages who shall fail or neglect to require the reports herein mentioned, or shall fail or neglect to require of such police officer to verify the same upon oath, or who shall refuse or neglect upon its appearing from such reports that there is probable cause to believe that any of the said offenses have been committed, to issue his warrant for the arrest of the offender, shall be guilty of a misdemeanor. Any person committing any of the offenses mentioned in this section shall be liable to a penalty of five hundred dollars, to be recovered by suit in the superior court in the county in which such offense may have been committed, one-half thereof to the use of the person bringing said suit, and one-half to the school fund of the county.—Rev., 3716.

672. Gambling, faro-banks and tables.—If any person shall open, establish, use, or keep a faro-bank or a faro-table, with the intent that games of chance may be played thereat, or shall play or bet thereat any money, property or thing of value, whether the same be in stake or not, he shall be guilty of a misdemeanor, and fined at least two hundred dollars and imprisoned not less than three months.—Rev., 3717.

673. Gambling tables, betting thereat.—If any person shall establish, use or keep any gaming table (other than a faro-bank) by whatever name such table may be called, at which games of chance shall be played, he shall on conviction thereof be fined not less than two hundred dollars, and be imprisoned not less than thirty days; and every person who shall play thereat, or thereat bet any money, property or thing of value, whether the same be in stake or not, shall be guilty of a misdemeanor, and fined not less than ten dollars.—Rev., 3718.

674. Gaming tables; allowing, on premises.—If any person shall knowingly suffer to be opened, kept or used in his house or any part of the premises occupied therewith, any of the gaming tables by this chapter prohibited, he shall forfeit and pay to any one who will sue therefor two hundred dollars, and shall also be guilty of a misdemeanor and fined and imprisoned.—Rev., 3719.

675. Gaming tables destroyed by justices.—All justices of the peace, sheriffs, constables and other officers of police are hereby authorized and directed, on information made to them on oath that any gaming table prohibited to be used by this chapter is in the possession or use of any person within the limits of their jurisdiction, to destroy the same by every means in their power; and they shall call to their aid all the good citizens of the county, if necessary, to effect their destruction.—Rev., 3720.

676. Gambling; justices and other officers to summon witnesses.—All justices of the peace, intendants and magistrates of police, mayors of towns, and judges of the supreme or superior court, who shall have good reason to believe that any person within their jurisdiction has knowledge of the existence and establishment of any faro-bank or faro-table, or gaming tables, prohibited by this chapter, or place where intoxicating liquors are sold contrary to law, in any town or county within their several jurisdictions, and such person not being minded to make voluntary information thereof on oath, then it shall be lawful for such justice of the peace, intendant and magistrate of police, mayor of town, or judge of supreme or superior court, to issue to the sheriff of the county, or any constable of the town or township in which said faro-bank or faro-table, or gaming table or tables, or place where intoxicating liquors are sold contrary to law, are supposed to be, a

subpoena, *capias ad testificandum*, or summons in writing, commanding such person to appear immediately before said justice of the peace, intendant or magistrate of police, mayor or judge, and give evidence on oath as to what he may know touching the existence, establishment and whereabouts of said gaming table or tables, faro-bank or faro-table, or places where intoxicating liquors are sold contrary to law, and the names and personal description of the keepers thereof; and such evidence when obtained shall be considered and held in law as an information on oath, and said justice, intendant, magistrate, mayor or judge, may thereupon proceed to seize and arrest said keepers and destroy said tables, or issue process therefor, in like manner as they do by authority of the preceding section.—Rev., 3721.

677. Gambling; money to be seized.—All moneys, or other property or thing of value exhibited for the purpose of alluring persons to bet on any game, shall be liable to be seized by any justice of the peace, or by any person acting under his warrant. And the moneys or other property or thing which shall be so seized, shall belong one-half to the person seizing them, and the other half to the use of the poor,—Rev., 3722.

678. Gaming tables; opposing destruction of.—If any person shall oppose the destruction of any prohibited gaming table, or the seizure of any moneys, property, or other thing staked on forbidden games, or shall take and carry away the same or any part thereof after seizure, he shall forfeit and pay to the person so opposed one thousand dollars, for the use of the state and the person so opposed; and shall, moreover, be guilty of a misdemeanor.—Rev., 3723.

679. Insects, ravages of.—If any person shall wilfully violate any regulation made by the commissioner and board of agriculture for the destruction of insect pests, he shall be guilty of a misdemeanor.—Rev., 3724.

680. Lotteries; advertising.—If any one by writing or printing or by circular or letter or in any other way advertise or publish an account of a lottery, whether within or without this state, stating how, when or where the same is to be or has been drawn or what are the prizes therein or any of them, or the price of a ticket or any share or interest therein, or where or how it may be obtained, he shall be guilty of a misdemeanor.—Rev., 3725.

681. Lotteries.—If any person shall open, set on foot, carry on, promote, make or draw, publicly or privately, a lottery, by whatever name, style or title the same may be denominated or known; or if any person, by such way and means, expose or set to sale any house or houses, real estate, or any goods or chattels, cash, or written evidence of debt, or certificates of claims, or anything of value whatsoever, every person so offending shall be guilty of a misdemeanor, and be fined not exceeding two thousand dollars, or imprisoned not exceeding six months, or both, in the discretion of the court. Any person who engages in disposing of any species of property whatsoever, money or evidences of debt, or in any manner distributes gifts or prizes upon tickets or certificates sold for that purpose, shall be held liable to prosecution under this section.—Rev., 3726.

682. Lottery tickets, sale of.—If any person shall sell, barter or dispose of any lottery ticket or order, for any number or shares in any lottery, or shall in any wise be concerned in such lottery, by acting as agent in the state for or on behalf of any such lottery, to be drawn or paid either out of or within the state, such person shall be guilty of a misdemeanor, and punished as in the preceding section.—Rev., 3727.

683. Letters; wrongfully opening or reading.—If any person shall wilfully, and without authority, open or read, or cause to be opened

or read, a sealed letter or telegram, or shall publish the whole or any portion of such letter or telegram, knowing it to have been opened or read without authority, he shall be guilty of a misdemeanor.—Rev., 3728.

484. Minor going in barroom, etc.—If the keeper or owner of any barroom, billiard room, or bowling alley shall allow any minor to enter or remain in such barroom, billiard room, or bowling alley, if before such minor enters or remains in such barroom, billiard room, or bowling alley, the owner or keeper thereof has been notified by the parents or guardian of such minor not to allow such minor to enter or remain in such barroom, billiard room, or bowling alley, he shall be guilty of a misdemeanor, and upon conviction be fined not exceeding fifty dollars or imprisoned not exceeding thirty days.—Rev., 3729.

485. Nontransferable script to laborers.—If any person who employs laborers by the day, week or month shall issue in payment for such labor any ticket or tickets, certificate or other script bearing upon their face the word "nontransferable," or shall issue tickets, certificates or script in any form that would render them void by transfer from the person to whom issued; or shall refuse to pay to the person holding the same their face value, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than ten dollars nor more than fifty dollars for each offense, or imprisoned not more than thirty days.—Rev., 3730.

486. Obscene literature.—If any person shall exhibit for the purpose of gain, lend for hire or otherwise publish or sell for the purpose of gain, or exhibit in any school, college or other institution of learning, or have in his possession for the purpose of sale or distribution, any obscene book, paper, writing, print, drawing or other representation, or any person posting any indecent placards, writings, pictures, or drawings on walls, fences, bill-boards, or other places, or any person making any public exposure of the person or other indecent exhibitions, or giving or taking part in any immoral show, exhibition, or performance where indecent, immoral, or lewd dances or plays are conducted in any booth, tent, room, or other place to which the public is invited, or any one who permits such exhibitions or immoral performances to be conducted in any tent, booth, or other place owned or controlled by him, he shall be guilty of a misdemeanor.—Rev., 3731; Laws 1907, c. 502.

487. Pension claims, speculating in.—If any person shall speculate in or purchase for a less sum than that to which each may be entitled the claims of any soldier or sailor, or widow of a deceased soldier or sailor, allowed under the provisions of the pension law, he shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court.—Rev., 3732.

488. Public drunkenness.—If any person shall be found drunk or intoxicated on the public highway, or at any public place, or meeting, in the counties of Dare, Graham, Buncombe, Henderson, Jackson, Ashe, Stanly, Madison, Gaston, Cleveland, Haywood, Macon, Mecklenburg, Catawba, or Rutherford, or in Poplar Branch and Fruitville townships, Currituck county, or at Pungo in Beaufort county, he shall be guilty of a misdemeanor, and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days.—Rev., 3733; Laws 1907, c. 305.

Note.—As to Clay County, see Laws 1907, c. 309.

Query, as to Warren County. See Laws 1907, c. 900.

For Wake County act, see Laws 1907, c. 908.

489. Public Indecency.—It shall be unlawful for any person to write, cut or carve any indecent word or words, or to paint, cut or carve any obscene or lewd picture, or representation, on any tree or other object near the public highways or public places. Any person guilty

of violating this act shall be fined not more than fifty dollars, or imprisoned not more than thirty days.—Laws 1907, c. 344.

690. Shooting rifles across Currituck sound and waters of Dare county.—If any person shall shoot a rifle across or over the waters of Currituck sound, or the waters of Dare county, except in East Lake township, he shall be guilty of a misdemeanor, and be fined not less than ten dollars nor more than fifty dollars, or imprisoned not less than ten days nor more than thirty days.—Rev., 3734.

691. Tramps; who are; discharged, how.—If any person shall go about from place to place begging, or subsisting on charity, he shall be denominated a tramp, and punished by a fine not exceeding fifty dollars, or by imprisonment not to exceed thirty days: Provided, that any person who shall furnish satisfactory evidence of good character shall be discharged without cost. Any act of begging or vagrancy by any person, unless a well-known object of charity, shall be evidence that the person committing the same is a tramp. This section shall not apply to any woman, or minor under the age of fourteen years, or to any blind person.—Rev., 3735.

692. Tramp entering dwelling without consent.—If any tramp shall enter any dwelling-house or kindle any fire on the highway or on the land of another without the consent of the owner or occupant thereof, or shall be found carrying any firearms or other dangerous weapon, or shall threaten to do any injury to any person, or to the real or personal estate of another, he shall be punished by imprisonment at the discretion of the court, not to exceed twelve months.—Rev., 3736.

693. Tramp maliciously injuring person or property.—If any tramp shall wilfully and maliciously do any injury to any person or to the real or personal estate of another, he shall be punished by imprisonment, at the discretion of the court, not to exceed three years.—Rev., 3737.

694. Tramp, arrest of.—Any person, upon a view of any offense described in sections three thousand seven hundred and thirty-five, three thousand seven hundred and thirty-six, three thousand seven hundred and thirty-seven, and three thousand seven hundred and thirty-eight, shall cause the said offender to be arrested upon a warrant and taken before some justice of the peace, or may apprehend the offender and take him before a justice of the peace, for examination, and, on his conviction, shall be entitled to the same fee as a sheriff.—Rev., 3738.

695. Trusts and monopolies.—If any person in any way violate any of the provisions of the law against trusts and monopolies, he shall be guilty of a misdemeanor, and shall be fined or imprisoned, or both, in the discretion of the court, and each day such violation exists after conviction and final judgment in the first trial shall constitute a separate offense.—Rev., 3739.

696. Anti-trust law of 1907.—Section 1. That it shall be unlawful for any person or corporation to directly or indirectly be guilty of any of the acts and things specified in any of the subsections of this section. (a) For any person, firm, corporation or association to make a sale or sales of any goods, wares, merchandise, articles or things of value whatsoever in North Carolina, whether directly or indirectly, or through any agent or employee, upon the condition that the purchaser thereof shall not deal in the goods, wares, merchandise, articles or things of value of a competitor or rival in the business of the person, firm, corporation or association making said sales. (b) For any person, firm, corporation or association to directly or indirectly wilfully destroy or injure, or undertake to destroy or injure, the business of any opponent or business rival in the state of North Carolina with the purpose or intention of attempting to fix the price of any thing of value

when the competition is removed. (c) For any person, firm, corporation or association which directly or indirectly buys or sells within the state, through himself or itself, or through any agent of any kind, or as agent or principal, or together with or through any allied, subsidiary or dependent person, firm, corporation or association, as much as fifty per centum in quantity of any article or thing of value which is sold or bought in the state to injure or destroy or undertake to injure or destroy the business of any rival or opponent, by lowering the price of any article or thing of value sold, so low, or by raising the price of any article or thing of value bought so high as to leave an unreasonable or inadequate profit for a time and with the purpose of increasing the profit on the business when such rival or opponent is driven out of business, or his, their or its business is injured. (d) For any person, firm, corporation or association dealing in any thing of value within the state of North Carolina to give away or sell, at a place where there is competition, such thing of value at a price lower than is charged by such person, firm, corporation or association, for the same thing at another place, where there is not sufficient reason for charging less at the one place than at the other, with the view of injuring the business of another. (e) For any person, firm, corporation or association engaged in buying or selling any thing of value in North Carolina to make or have any agreement or understanding, express or implied, with any other person, firm, corporation or association, not to buy or sell said things of value within certain territorial limits within the state, with intention of preventing competition in selling or to fix the price or prevent competition in buying of said things of value within these limits: Provided, nothing herein shall be construed to prevent an agent from representing more than one principal. But nothing in this proviso shall be construed to authorize two or more principals to employ as common agent for the purpose of suppressing competition or lowering prices.

Sec. 2. That any corporation, either as agent or principal, violating any of the provisions of this act shall be guilty of a misdemeanor, and such corporation shall upon conviction be fined not less than one thousand dollars for each and every offense, and any person violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be fined not less than five hundred dollars or imprisoned, within the discretion of the court.

Sec. 3. That any person being either within or without the state, who encourages or wilfully allows or permits any agent or association in business in this state to violate the provisions of this act, shall be guilty of a misdemeanor, and upon conviction shall be punished as provided in section two hereof.

Sec. 4. That where the things prohibited in section one of this act are continuous, then in such event, after the first violation of any of the provisions hereof, each week that the violation of such provision shall continue shall be a separate offense.

Sec. 5. That the provisions of this act shall not be construed so as to repeal or restrict the common-law doctrine preventing unlawful combination in trade and commerce, which are hereby re-enacted and declared to be in full force in this state, except as may be inconsistent with the other provisions of this act.

Sec. 6. That if it shall be made to appear upon affidavit to any solicitor, the affidavit may be made upon information and belief, and when made upon information and belief it shall state the ground upon which the affidavit is made, and if reasonable, in the opinion of the solicitor in this state, that any corporation has violated or is violating any of the provisions of this act within the judicial district of such solicitor, it shall be the duty of such solicitor to apply to a judge of such judicial district, or a judge holding the courts of such judicial

district, for an order to cause such corporation, its officers and agents, or either of them, to appear before such judge at a time and place to be named by him, which time shall not be less than five days from the issuing thereof, to show cause why such corporation, its officers and agents, or either of them, should not produce before such judge at a time and place to be named, all the papers, books and records of such corporation, and if the judge shall be satisfied that such production should be made, he shall make an order requiring such corporation, its officers and agents, or either of them, to produce all of its papers, books and records to be examined by such solicitor in the presence of such judge. If any corporation, its officers or agents, shall fail to appear or shall fail to produce such papers, books or records as may be required, he or it shall be guilty of a misdemeanor, and it shall be the duty of such solicitor to proceed to prosecute such corporation, its officers or agents. The said solicitor, in case of the conviction of a corporation, shall be paid a fee of two hundred dollars, to be taxed against said corporation; and in case of the conviction of an individual, a fee of one hundred dollars, to be taxed against said individual.

Sec. 7. This act shall be in force from and after July tenth, one thousand nine hundred and seven.—Laws 1907, c. 218.

Note.—No person who is subpoenaed and required by the state to testify under the provisions of the foregoing act shall be prosecuted or convicted on account of matters disclosed by the testimony of such witness, nor shall the testimony of such witness be received or used in any court in any prosecution against him or her.—Laws 1907, c. 219.

697. Vagrancy.—If any person shall come within any of the following classes, he shall be deemed a vagrant, and shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days:

1. Persons wandering or strolling about in idleness who are able to work and have no property to support them.

2. Persons leading an idle, immoral or profligate life who have no property to support them and who are able to work and do not work.

3. All persons able to work having no property to support them and who have not some visible and known means of a fair, honest and reputable livelihood.

4. Persons having a fixed abode who have no visible property to support them and who live by stealing or by trading in, bartering for or buying stolen property.

5. Professional gamblers living in idleness.

6. All able-bodied men who have no other visible means of support who shall live in idleness upon the earnings of their mother, wife or minor child or children, except male child or children over eighteen years of age.—Rev., 3740.

697a. Bawdy house keepers and inmates are vagrants.—All keepers and inmates of bawdy houses, assignation houses, lewd and disorderly houses, and places where illegal sexual intercourse is habitually carried on, are declared to be vagrants within the meaning of section three thousand seven hundred and forty of the Revisal of one thousand nine hundred and five.

It shall be the duty of the chief of police, marshal, constable or other chief ministerial officer of each city and town in this state to furnish to the police justice, recorder, mayor or other trial officer of such city or town a list of the bawdy, assignation, lewd and disorderly houses, and places where illegal sexual intercourse is carried on, together with the names of the keepers and inmates of such houses and places, in such city or town, every thirty days, and it shall be the duty of such police justice, recorder, mayor or other trial officer, upon the filing of such list, to issue his warrant for such persons herein declared to be vagrants, and to punish such persons as may be guilty under this act, as provided in section three thousand seven hundred and forty, Revisal of one thousand nine hundred and five: Provided, that in trials under

this act any keeper, inmate or employee of the houses or places, or either of them, shall be competent and compellable to give evidence of the character and nature of such house or such place, and the character and acts of the keepers and inmates of such houses and places; but said person so testifying shall not be prosecuted or punished for violation of any law about which crime such person shall have been required to testify.

If any chief of police, marshal, constable or other chief ministerial officer of any city or town shall fail to furnish the list of houses and places provided for in this act, or shall suppress the name or names of such persons as he is required herein to report, he shall be guilty of a misdemeanor, and upon conviction therefor shall be fined or imprisoned, or both, at the discretion of the court.—Laws 1907, c. 1012.

CHAPTER XXXIII.

PUBLIC PROPERTY.

698. Cutting timber on lands before obtaining a grant.—If any person shall make an entry of any lands, and before perfecting title to same, shall enter upon such lands and cut therefrom any wood, trees or timber, he shall be guilty of a misdemeanor. One-half of any fine collected under this section shall be paid to the informer and one-half to the school fund of the county in which the land is situated. Any person found guilty under the provisions of this section shall further pay to the state double the value of the wood, trees or timber taken from the land, and it shall be the duty of the solicitor of the district in which the land lies to sue for the same.—Rev., 3741.

699. Disorderly conduct in public buildings.—If any person shall make any rude or riotous noise or be guilty of any disorderly conduct in or near any of the public buildings of the state, or shall write or scribble on, mark, deface, besmear, or injure the walls of any of the public buildings of the state, or any statue or monument, or who shall do or commit any nuisance in or near any public building of the state, he shall be guilty of a misdemeanor. The keeper of the capitol or any person in charge of any of the public buildings shall have authority to arrest summarily and without warrant for a violation of this section. The words "public buildings" as used in this section shall include the grounds around said buildings.—Rev., 3742.

700. Meridian monument; injuring, or failing to discharge duty in reference thereto.—If any person shall in any manner injure, deface, remove or destroy any meridian monument or tablets, or any part thereof, or shall fail, neglect or refuse to do and perform any act, matter or thing by law required of him to be done in connection with such monuments or tablets, shall be guilty of a misdemeanor, and upon conviction thereof shall pay a fine or be imprisoned, or both, at the discretion of the court.—Rev., 3743.

701. Phosphate rock in rivers.—If any person shall dig, mine or remove any phosphate rock or deposit from any of the navigable waters of this state, except for the purpose of prospecting and discovering as allowed by law, he shall be guilty of a misdemeanor, and shall also forfeit and pay ten dollars per ton for every ton of phosphate rock or deposit so mined, dug or removed, one-half to the use of the state, and the other one-half to go to the informer.—Rev., 3744.

702. Public grounds of state in Raleigh.—If any person shall wilfully trespass upon any of the public lots belonging to the state in the city of Raleigh, or shall cut any timber or commit any waste, or shall

refuse to surrender possession after the expiration of their leases, or if any person in possession of any of said lots above mentioned shall refuse to leave the same and shall further refuse to surrender possession within ten days after demand made by the keeper of the capitol, said person shall be guilty of a misdemeanor; and it shall be the duty of said keeper of the capitol to report all such violations of law to the governor or to the attorney-general, and if any of the said persons shall be convicted, they shall be fined or imprisoned at the discretion of the court.—Rev., 3745.

703. Trees in capitol square.—No person or persons shall drive, screw or otherwise insert any nails, screws or other devices into or upon any of the trees in the capitol square in the city of Raleigh for any purpose whatsoever, and any person or persons violating this act shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars or imprisoned not more than ten days: Provided, this section shall not apply to repairing the small houses and drinking fountains for the squirrels in said park.—Laws 1907, c. 67.

704. Trespass on public lands.—If any person shall erect a building on any public lands before the same shall have been sold or granted by the state, or on any lands belonging to the state board of education before the same shall have been sold and conveyed by them, or cultivate or remove timber from any of said lands, such person shall be guilty of a misdemeanor; and, when any person shall be in possession of any part of said land, it shall be the duty of the sheriff of the county in which the land is situated, and he is hereby required, to give notice in writing to such person, commanding him to depart therefrom forthwith; and if the person in possession, upon being so notified, shall not, within two weeks after the time of notice, remove therefrom, the sheriff is required to remove him immediately, and if necessary, shall summon the power of the county to assist him in so doing.—Rev., 3746.

CHAPTER XXXIV.

RAILROADS.

705. Arrangement of cars.—If any officer or agent of a railroad company in the arrangement of cars in a train shall direct or knowingly suffer baggage, freight, merchandise, or lumber cars to be placed in the rear of passenger cars, except in case of accident or except when cars are provided with automatic couplers or brakes, he shall be guilty of a misdemeanor: Provided, this section shall not apply to the Wilmington Seacoast Railroad Company.—Rev., 3747.

706. Brasses protected.—Every person, firm or corporation buying railroad brasses, or any composition metal specially used in the operation of trains, shall keep a register and shall keep therein a true and accurate record of each purchase, showing the name of the person from whom purchased, the amount paid for the same, the date thereof, and also any and all marks or brands upon said metal. The said register shall be at all times open to the inspection of the public; and any person or dealer buying or selling such metals without complying with this statute shall be guilty of a misdemeanor; and any person making any false entry therein shall be guilty of a misdemeanor. Every person, firm or corporation who shall buy or receive any such metals from persons under twenty-one years of age, or who shall buy or receive any such metals after the same have been broken up and the marks or brands obliterated, shall be guilty of a misdemeanor, and every person

buying, receiving or selling, or offering for sale metals broken into small pieces, or so broken as to obliterate the marks or brands, shall be prima facie presumed to have received the same knowing the same to have been stolen.—Laws 1907, c. 464.

707. Beating way on trains.—If any person other than a railroad employee in the discharge of his duty, without authority from the conductor of the train or by permission of the engineer and with the intention of being transported free and without paying the usual fare for such transportation, rides or attempts to ride on top of any car, coach, engine or tender, on any railroad in this state, or on the draw-heads between cars, or under cars on truss-rods, or trucks, or in any freight car, or on a platform of any baggage car, express car or mail car on any train, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding fifty dollars, or imprisoned not more than thirty days. Any person charged with a violation of this section may be tried in any county in this state through which such train may pass carrying such person, or in any county in which such violation may have occurred or may be discovered.—Rev., 3748.

708. Cursing, etc., on passenger trains.—It shall be unlawful for any person or persons to curse or use profane or indecent language on any passenger train in the state of North Carolina. Any person or persons so offending shall, upon conviction, be fined not more than fifty dollars or imprisoned not more than thirty days.—Laws 1907, c. 470.

709. Cleaning cars daily.—Section 1. Every person or railroad company, whether incorporated or not, engaged in the regular business of carrying passengers on its railroad cars in this state, shall have their passenger cars on their roads cleaned, brushed, dusted and the windows washed, if needed, at least once each day, and shall in each car, in which male and female passengers are carried, have therein a toilet-room for each sex, and have the same kept clean and decent.

Sec. 2. Any person or corporation engaged in the business described in section one of this act who shall wilfully or negligently fail or refuse to give orders to their agent or agents in charge of such cars to comply with the requirements of this act, shall forfeit twenty dollars for each day it so refuses, to be recovered by any person suing for said penalty.

Sec. 3. The wilful or negligent refusal or the failure on the part of the conductor or manager of any such passenger cars as named in section one, to comply with said section one, shall be received as evidence of such failure or refusal of such person or railroad company to give said orders, and moreover such conductor or manager shall be guilty of a misdemeanor if he fail or refuse to carry out said orders of the person or company mentioned in section one of this act.—Laws 1907, c. 474.

710. Discrimination in charges.—If any common carrier shall, directly or indirectly, by any special rate, rebate, drawback or other device, charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered in the transportation of passengers or property subject to the provisions of law than it charges, demands or collects or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions; or shall make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic in any respect whatsoever, or shall subject any particular person, company, firm, corporation or locality or any particular description of traffic to any undue or unreasonable prejudice

or disadvantage in any respect whatsoever, such person or corporation shall be, upon conviction thereof, fined not less than one thousand nor more than five thousand dollars for each and every offense.—Rev., 3749.

711. Discriminating against Atlantic and North Carolina Railroad.—If any railroad in North Carolina shall discriminate against the freights received from the Atlantic and North Carolina Railroad, or shall make rates by which, either directly or indirectly, by rebates or otherwise, freights may be delivered at less rate when received from other points than from points along the Atlantic and North Carolina Railroad in proportion to distance hauled, it shall be guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred dollars for each and every violation thereof. An indictment for the misdemeanor may be found and tried either in the courts where the goods were shipped or delivered, but the court in which the indictment for the offense is first found shall have exclusive jurisdiction.—Rev., 3750.

712. Discrimination against connecting lines.—If any common carrier shall not afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines and for the forwarding and delivering of passengers and freights to and from their several lines and those connecting therewith, or shall discriminate in their rates and charges against such connecting lines, or if any connecting lines shall not make as close connection as practicable for the convenience of the traveling public, or shall not obey all rules and regulations made by the corporation commission relating to trackage, it shall be punished by a fine of not less than five hundred dollars nor exceeding five thousand dollars for each and every offense.—Rev., 3751.

713. Entering cars after forbidden.—If any person shall enter into a railroad passenger car, or baggage car, or mail car, or caboose car, or upon the platforms of said cars, after being forbidden so to do by the conductor or his assistants, or the baggage master or other person in charge of said cars, unless said persons enter said cars or on said platforms as a passenger or in some official capacity authorized by law, or on business with a passenger or some official or employee of the railroad or other like purpose, for every violation of this section the person so offending shall be guilty of a misdemeanor, and shall be fined not exceeding ten dollars.—Rev., 3752.

714. Entering freight cars or breaking seals thereon.—If any person shall, with intent to commit larceny or other felony, break any seal upon a railroad car containing any goods, wares, freight, or other thing of value, or shall unlawfully and wilfully break or enter into any railroad car containing any goods, wares, freight or other thing of value, such person shall upon conviction be punished by confinement in the penitentiary in the discretion of the court for a term not exceeding five years. Any person found unlawfully in such car shall be presumed to have entered in violation of this statute.—Laws 1907, c. 468.

715. Failure to construct cattle-guards and crossings.—If any incorporated company operating any railroad passing through and over the land of any person now enclosed, or which may hereafter become enclosed, shall fail, at its own expense, to construct and constantly maintain in good and safe condition, good and sufficient cattle-guards at the points of entrance upon and exit from said enclosed land, or shall fail to make and keep in constant repair crossings to any plantation road thereupon, such incorporation shall be guilty of a misdemeanor, and fined in the discretion of the court.—Rev., 3753.

716. Hours of service of employees regulated.—Section 1. It shall be unlawful for any railroad company doing business in the state of North Carolina, or for any officer, agent or employee thereof who has

the direction of or control over any employee or agent of the classes mentioned below, to cause or knowingly permit or allow any employee belonging to any such class to render any service for such railroad company pertaining to the movement of trains, for a greater number of hours in any twenty-four hours than is hereinafter specified, to-wit:

(a) Any employee doing the work of a train dispatcher (or telegraph operator), having in charge in any degree the direction of the movement of any train or trains in North Carolina, for more than eight hours in any twenty-four hours: Provided, the corporation commission of North Carolina is hereby authorized to permit any such telegraph operator at any station on any road in this state to work for a longer time, not exceeding twelve hours in any twenty-four hours, where the said corporation commission shall determine that the safety of the traveling public will not be endangered by such extension of hours.

(b) Any conductor, flagman, engineer, brakeman, fireman or other member of any train crew, for more than sixteen hours in any twenty-four hours.

Sec. 2. Any railroad company, or officer or agent thereof, having the direction of or control over any employee mentioned in section one of this act, who shall violate any of the provisions hereof, shall be guilty of a misdemeanor, and upon conviction such railroad company shall be fined not less than five hundred dollars; and such officer or agent shall be fined or imprisoned, or both, in the discretion of the court.

Sec. 3. Any train dispatcher or telegraph operator, having in charge in any degree the direction of the movement of any train or trains in North Carolina, who shall work more than eight hours in any twenty-four hours as an employee performing the duties aforesaid, except as shall be permitted by the corporation commission under the provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, in the discretion of the court.

Sec. 4. Any conductor, flagman, fireman, engineer, brakeman, or other member of any train crew, who shall work for any railroad company more than sixteen hours in any twenty-four hours, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court: Provided, that it shall not be held a violation of this act by any conductor, brakeman, flagman, engineer, fireman, or other member of any train crew who shall work more than sixteen hours in any twenty-four hours in order to clear the track or tracks of said railroad company from wrecks, washouts, or obstruction caused by the act of God, so that they may bring the train or trains operated by them to a station on said road, which station shall be either the schedule destination of said train or the station at which there is regularly a change of train crews; nor shall it be held a violation of this act by the corporation, officers or agents thereof, to permit the said conductor, flagman, brakeman, fireman, engineer or other member of a train crew to work overtime under the circumstances and conditions hereinbefore stated.—Laws 1907, c. 456.

717. Injuring or obstructing.—If any person shall wilfully and maliciously put or place any matter or thing upon, over or near any railroad track; or shall wilfully and maliciously destroy, injure or remove the road-bed, or any part thereof, or any rail, sill, or other part of the fixture appurtenant to, or constituting or supporting any portion of the track of such railroad; or shall wilfully and maliciously do any other thing with intent to obstruct, stop, hinder, delay, or displace the cars traveling on such road, or to stop, hinder or delay the passengers or others passing over the same; or shall wilfully and maliciously injure the road-bed or the fixtures aforesaid, or any part thereof, with any other intent whatsoever, such person so offending shall be guilty of a misdemeanor, and fined not exceeding one thousand dollars nor less than two hundred dollars, and be imprisoned in the state's prison or

county jail not less than four months nor more than ten years, and shall be committed to jail till he find surety for his good behaviour for a space of time not less than three nor more than seven years. And if it shall happen that by reason of the commission of the offenses aforesaid, or any of them, any engine or car shall be displaced from the track, or shall be stopped, hindered or delayed, so that any one thereby be instantly killed, or so wounded or hurt as to die therefrom in twelve calendar months thereafter, or shall thereby be maimed or be disabled in the use of any limb or member, then, and in every such case, the party so offending, his counselors, aiders and abettors, on conviction, shall suffer death, if the persons were killed, and shall be imprisoned in the state's prison not less than five nor more than sixty years, if the persons were maimed or disabled. And if any person shall maliciously destroy or injure any plank-road, turnpike or canal, or any appurtenance or fixture belonging thereto, or used therewith, or shall maliciously destroy or injure any lock, dam or sluice, the same being a part of any work erected or made for the purpose of navigation, or improving the navigation of any water, the person so offending shall be guilty of a misdemeanor, and shall suffer the like punishment as in this section provided for maliciously injuring a railroad.—Rev., 3754.

718. Injuries to, without malice.—If any person, unlawfully and on purpose, but without malice, shall commit any of the offenses mentioned in the preceding section, he shall be guilty of a misdemeanor. And if it shall happen that by reason of the commission of any such offense any person shall be instantly killed, or so wounded or hurt as to die therefrom in twelve calendar months thereafter, or shall thereby be maimed or disabled in the use of any limb or member, then, and in every such case, the party so offending, his counselors, aiders and abettors, shall be imprisoned not less than twelve months and fined at the discretion of the court.—Rev., 3755.

719. Injuries to property.—If any person or persons shall wilfully do or cause to be done any act or acts whatever whereby any building, construction or work of any railroad corporation, or any engine, machine or structure, or any matter or thing appertaining to the same, shall be stopped, obstructed, impaired, weakened, injured or destroyed, he shall be guilty of a misdemeanor.—Rev., 3756.

720. Intoxicated person entering train.—If any intoxicated person, after being forbidden by the conductor, captain, or other person having charge of any railroad train, steamboat, or other conveyance for the use of the traveling public, shall enter such train, boat or other conveyance, he shall for every violation of this section be guilty of a misdemeanor.—Rev., 3757.

721. Public drinking on train.—Any person or persons who shall publicly engage in the drinking of intoxicating liquors in the presence of passengers on any passenger car in the state, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars and not to exceed fifty dollars, or imprisoned not to exceed thirty days, but this act shall not apply to any smoking compartment, closet, dining or buffet car. It shall be the duty of all railway companies to have posted a copy of this act in all passenger coaches used for transporting passengers within the state.—Laws 1907, c. 455.

722. Intoxicated operatives.—Any train dispatcher, telegraph operator, engineer, fireman, flagman, brakeman, switchman, conductor, motorman, or other employee of any steam, street, suburban or interurban railway company, who shall be intoxicated while engaged in running or operating, or assisting in running or operating, any railway train, shifting-engine, street or other electric car, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, in the discretion of the court.—Laws 1907, c. 330.

723. Malicious removal of waste or packing.—If any person shall wilfully and maliciously take or remove the waste or packing from any journal box or boxes of any locomotive, engine, tender, carriage, coach, car, caboose or truck used or operated upon any railroad, whether the same be operated by steam or electricity, he shall, upon conviction thereof, be fined or imprisoned in the jail or state's prison, in the discretion of the court.—Rev., 3759.

724. Officers failing to turn over property to successors.—If the president and directors of the several railroads, and any person acting under them, shall, upon demand, fail or refuse to account with the president and directors elected or appointed to succeed them, and to transfer to them forthwith all the money, books, papers, choses in action, property and effects of every kind and description belonging to such company, they shall be guilty of a felony, and shall be punished by imprisonment in the state's prison for not less than one nor more than five years, and be fined at the discretion of the court. All persons conspiring with any such president, directors or their agents to defeat, delay or hinder the execution of this section, shall be guilty of a misdemeanor, and punished in like manner. The governor is hereby authorized, at the request of the president, directors, and other officers of any railroad company, to make requisition upon the governor of any other state for the apprehension of any such president failing to comply with this section.—Rev., 3760.

725. Passengers with second-class tickets riding in first-class cars.—Any passenger purchasing or holding a second-class ticket, after being requested or directed by any conductor or other officer in charge of any train on any railroad or steamboat in this state, riding in any first-class coach or cabin, refuses to pay the difference between a first-class and a second-class fare or rate, or refuses to go into the second-class coach or cabin of any railroad or steamboat company, when there shall be a comfortable second-class coach or cabin in said train or on said steamboat, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. Any justice of the peace in the county where such offense is committed shall have jurisdiction of said offense, upon sworn complaint of any officer of such railroad or steamboat company.—Rev., 3761.

726. Pooling freights.—If any person shall be concerned in pooling freights, or shall directly or indirectly allow or accept rebates on freights, he shall be guilty of a misdemeanor, and upon conviction shall be fined not less than one thousand dollars or imprisoned not less than twelve months.—Rev., 3762.

727. Shooting or throwing at cars.—If any person shall wilfully and unlawfully cast or throw or shoot any stone, rock, bullet, shot, pellet, or other missile at, against or into any railroad car, locomotive or train, while the said car or locomotive shall be in progress from one station to another, or while the said car, locomotive or train shall be stopped for any purpose, the person so offending shall be guilty of a misdemeanor, and punished by fine or imprisonment in the county jail or state's prison, at the discretion of the court.—Rev., 3763.

728. Street cars regulated.—See chapter on Railroads.—Laws 1907, c. 850.

729. Tickets, unlawful sale of.—If any person shall sell or deal in tickets issued by any railroad company, unless he is a duly authorized agent of said railroad company, or shall refuse upon demand to exhibit his authority to sell or deal in said tickets, he shall be guilty of a misdemeanor.—Rev., 3764.

730. Train robbery.—If any person shall enter upon any locomotive engine, car or cars on any railroad in this state, and by threats, the

exhibition of deadly weapons, or by the discharge of any pistol or gun on, in or near any such engine, car or cars, shall induce or compel any person on such engine, car or cars, to submit and deliver up, or allow to be taken therefrom, or from him, any thing of value, he shall be guilty of train robbery, and on conviction thereof shall be punished by imprisonment in the state's prison not less than ten years nor more than twenty years.—Rev., 3765.

731. Train robbery, attempt.—If any person or persons shall stop, or cause to be stopped, or impede, or cause to be impeded, or conspire together for that purpose, any locomotive engine, or any car or cars, on any road in this state, by intimidation of those in charge thereof, by force, threats, intimidation, or otherwise, of taking therefrom or causing to be delivered up to such person or persons forcing, threatening or intimidating, any thing of value, to be appropriated to his or their own use, he shall be guilty of attempting train robbery, and, on conviction thereof, shall be punished by confinement in the state's prison not less than two years nor more than twenty years.—Rev., 3766.

732. Unauthorized railroads.—If any person shall make or establish any canal, turnpike, tramroad, railroad or plank-road, with intent to use the same to transport passengers other than persons or members owning such canal or road, he shall be guilty of a misdemeanor. This section shall not apply to any narrow-gauge railroad or tramroad the principal business of which is the transportation of logs, lumber or other articles for the owners of such roads.—Rev., 3767.

733. Unreasonable rates.—If any railroad doing business in this state shall charge, collect, demand or receive more than a fair and reasonable rate of toll or compensation for the transportation of passengers or freight of any description, or for the use and transportation of any railroad car upon its track or any of the branches thereof, or upon any railroad in this state which has the right, license or permission to use, operate or control the same, it shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five hundred nor more than five thousand dollars.—Rev., 3768.

734. Passenger rates.—See chapter on Railroads.—Laws 1907, c. 216.

735. Free transportation.—See chapter on Railroads.—Laws 1907, c. 216.

736. Freight Rate Discrimination.—See chapter on Railroads.—Laws 1907, c. 217.

CHAPTER XXXV.

ROADS AND BRIDGES.

737. Barbed-wire fences along.—If any person shall erect or maintain a barbed-wire fence along any public road or highway, and within ten yards thereof, without putting a railing or plank on top of said fence not less than three inches in width, he shall be guilty of a misdemeanor and fined or imprisoned at the discretion of the court. This section shall apply to the counties of Rowan, Swain, Haywood, Catawba, Greene, Richmond, Stokes, Rutherford, Forsyth, Yadkin, Brunswick, Durham, Wilkes, Stanly, Cumberland, Iredell, Macon and Rockingham.—Rev., 3769.

738. Board of supervisors failing to make reports.—If any board of supervisors shall fail to make any report required by law, or to discharge any duty imposed by law, the members thereof shall be guilty of a misdemeanor. The indictment may be against the board jointly, or against the justices composing said board, or any one or more of them severally.—Rev., 3770.

739. Bridges, injuring.—If any person shall unlawfully and wilfully demolish, destroy, break or tear down, injure or damage any bridge across any of the creeks or rivers or other streams in the state, he shall be guilty of a misdemeanor, and fined or imprisoned, or both, in the discretion of the court.—Rev., 3771.

740. Bridges, failure to repair.—If any owner of a water-mill, situated on any public road, or any other person whose duty it is to keep up and repair bridges built across any ditch, drain, or canal, in the chapter entitled Roads, Bridges and Ferries, shall refuse or neglect to keep up and repair, or shall suffer to remain out of repair for the space of ten days, any bridge which by law he may be required to keep up and repair, he shall be guilty of a misdemeanor.—Rev., 3772.

741. Bridges, failure to maintain.—If any person, who is liable to keep up and maintain any bridge across the public road, as provided by section one thousand seven hundred and seventy-two, shall permit such bridge to remain out of repair for ten days, unless unavoidably prevented, he shall be guilty of a misdemeanor.—Rev., 3773.

742. Bridges; vessels not fastened to.—If any person shall fasten any decked vessel or steamer to any bridge that crosses a navigable stream, he shall be guilty of a misdemeanor, and in the case of a bridge that crosses a county line, may be prosecuted in either county.—Rev., 3774.

743. Bridges, failure of railroads, etc., to keep up.—If any railroad, plank-road, or turnpike company shall fail to keep up, at its own expense, all bridges on or over county or incorporated roads, which it has made necessary to be built in establishing its road, it shall be guilty of a misdemeanor, and fined.—Rev., 3775.

744. Churches, way to.—If any person shall maliciously stop up or obstruct the way leading to any place of public worship, or to any spring or well commonly used by the congregation, he shall be guilty of a misdemeanor, and fined not more than fifty dollars or imprisoned not more than thirty days.—Rev., 3776.

Note.—For injuries to gates across cartways, see s. 2694 of the Revisal.

745. Damage to roads by hauling logs, how paid.—If any of the public roads in Anson, Beaufort, Bertie, Clay, Columbus, Currituck, Dare, Gates, Halifax, Lenoir, Macon, Pasquotank, Pitt, Rutherford, Stokes, Swain, Tyrrell and Yancey counties shall be used by any person engaged in hauling logs or wood, whether such hauling be by the employees or agents of any other person, company, corporation, or by contractors for any other person, company or corporation, and the public roads shall become damaged by such use, upon complaint made to the chairman of the board of supervisors of the public roads of the township in which such damaged road is situated, he shall summon the person, company or corporation, or the manager of such person, company or corporation, alleged by such complainant to have damaged such road, before a called or regular meeting of the board of road supervisors of such township in which such alleged damaged road is situated, within ten days after complaint is made to him, and said board of road supervisors shall investigate by visiting and inspecting such damaged road, and they shall hear evidence on oath as to the condition of such damaged road and the cause of its bad condition, and the damage done to such road by the hauling of logs over such road by such person, company or corporation; and if the board of supervisors shall find such road, or any part thereof, damaged by the hauling of logs over the same, the person, company or corporation, or their agents, employees or contractors, alleged in the complaint to have damaged such road or any part thereof, they shall assess against such person, company, or corporation an amount of money sufficient to repair such

road. And the board of road supervisors shall return to the clerk of the superior court the amount of such assessment as a judgment of the board of township road supervisors, and the clerk shall docket this transcript and it shall thereupon become a judgment of the superior court, and the clerk shall issue execution against such delinquent person or corporation for the assessed damages as other executions, and the sheriff shall pay the proceeds of such judgment to the clerk of the superior court, to be applied by the board of township supervisors to the repair of such damaged road.—Rev., 3777.

746. Damage to road by hauling logs or wood.—If any person, company or corporation shall damage any public road, bridge or causeway by hauling logs or sawmill timber thereon, and shall not repair the damage done thereto within five days after having been notified of said damage by the overseer of said road, or by any member of the board of supervisors of the township in which said damaged road is situated, he shall be guilty of a misdemeanor, and shall be fined not less than ten nor more than fifty dollars, or be imprisoned not exceeding thirty days: Provided, if any person shall pay the damage as assessed by the board of supervisors for injury to such road, the payment of such damages shall be a complete bar to any criminal prosecution under this section, and if any criminal prosecution shall have been commenced prior to the payment of said damages, all further proceedings in said criminal prosecution may be ended by the defendant paying the cost necessarily incurred in said criminal prosecution and satisfying the court that said damages and all proper costs have been paid.—Rev., 3778.

747. Failure to work.—If any person liable to work on the road shall fail to attend and work, as provided by law, when summoned so to do, unless he shall have paid one dollar as provided, he shall be guilty of a misdemeanor, and fined not less than two dollars nor more than five dollars, or imprisoned not exceeding five days, and if any defendant shall be unable to discharge the judgment and costs that may be recovered against him, the costs shall be paid by the county.—Rev., 3779.

748. Fast driving over bridges.—If any person shall ride or drive over any public bridge at a rate of speed faster than a walk, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days: Provided, that this section shall not apply to any bridge unless the county commissioners shall keep posted at each end of such bridge a notice forbidding the riding or driving over such bridge at a rate of speed faster than a walk.—Rev., 3780.

749. Gates across public roads, leaving open.—If any person shall leave open, break down or otherwise injure any gate lawfully across any public road, he shall forfeit and pay for every such offense ten dollars to the person erecting the same or his assigns of the land, and if the offense shall be maliciously or wantonly done, he shall be guilty of a misdemeanor.—Rev., 3781.

750. High-water signals established.—If any overseer of roads shall fail to establish high-water marks or signals on both sides of any river, creek or stream which is used as a ford for a public highway, and to permanently fix the same, he shall be guilty of a misdemeanor.—Rev., 3782.

751. Injury to sign-boards or mile-posts.—If any person shall needlessly remove, knock down or deface any public sign-post, arms, or any mile-mark, he shall be guilty of a misdemeanor.—Rev., 3783.

752. Obstruction of roads.—If any person shall wilfully alter, change or obstruct any highway, cartway, mill road or road leading to and from any church or other place of public worship, whether the right-of-

way thereto be secured in the manner provided for by law or by purchase, donation or otherwise, such person shall be guilty of a misdemeanor, and fined or imprisoned, or both. If any person shall hinder or in any manner interfere with the making of any road or cartway laid off according to law, he shall be guilty of a misdemeanor, and punished by fine or imprisonment, or both, in the discretion of the court.—Rev., 3784.

753. Overseer; neglect of duty.—If any overseer of a road shall wilfully neglect any of the duties imposed on him by law, he shall be guilty of a misdemeanor, and fined not to exceed fifty dollars or imprisoned not to exceed thirty days.—Rev., 3785.

CHAPTER XXXVI.

REVENUE.

754. Agent of corporation failing to pay taxes.—If any agent or officer of a corporation, after having been notified by the sheriff or tax collector that the taxes assessed against such corporation are delinquent, shall fail or refuse to pay over to the sheriff or tax collector all moneys in his hands, or which may afterwards come into his hands, belonging to such corporation, not exceeding the amount of the taxes due, he shall be guilty of a misdemeanor, and fined not less than fifty nor more than five hundred dollars.—Rev., 3786.

755. License tax, failure to pay.—If any person liable for any license tax fail or refuse to pay such tax when demanded by the sheriff, he shall be guilty of a misdemeanor, and punished by fine or imprisonment, at the discretion of the court.—Rev., 3787.

756. Officer failing to surrender tax list.—If any sheriff or tax collector shall refuse or fail to surrender his tax list for inspection or correction upon demand by the authorities imposing the tax, or their successors in office, he shall be guilty of a misdemeanor, and imprisoned not more than five years, and fined not exceeding one thousand dollars, at the discretion of the court.—Rev., 3788.

757. Peddling without license.—If any person shall unlawfully hawk or peddle any goods, wares or merchandise, or shall fail, upon the application of the sheriff or his deputy, or any justice of the peace, to show his license as required by law, he shall be guilty of a misdemeanor, and fined not exceeding fifty dollars, or imprisoned not exceeding thirty days.—Rev., 3789.

758. Sheriff failing to attend tax sale; selling property not liable.—If any sheriff shall fail to attend any sale of lands as required by law in regard to tax sales, either in person or by competent deputy, he shall be guilty of a misdemeanor and liable to a penalty of three hundred dollars, to be recovered by an action in the superior court against the sheriff and his bondsmen. And if such officer or deputy shall sell or assist in selling any real property, knowing the same not to be subject to taxation, or that the taxes for which the same is sold have been paid, or shall knowingly and willingly sell or assist in selling any real property for payment of taxes to defraud the owner of such real property, or shall knowingly or willingly execute a deed for property so sold, he shall be guilty of a misdemeanor, and be liable to a fine of not less than one thousand nor more than three thousand dollars, or to imprisonment not exceeding one year, or to both fine and imprisonment, and to pay to the injured party all damages sustained by such wrongful act, and all such sales shall be void.—Rev., 3790.

759. Stevedores to obtain license.—If any person shall engage in the business of loading and unloading vessels upon contract, or if any person shall solicit or make any contract for himself or for any other person to load or unload any vessel, either by day's work or by the job for the owners, master, consignee, or shipper, or do or perform any other of the work usually performed by contracting or boss stevedores, without having previously obtained license from the sheriff in the manner provided by law, he shall be guilty of a misdemeanor, and shall be fined or imprisoned, or both, at the discretion of the court.—Rev., 3791.

760. Tax commissioners may examine books.—If any corporation, firm or individual shall, upon demand, refuse to permit the state tax commissioners, or any one of them, to examine the books, papers and accounts of such corporation, firm or individual, for the purpose of obtaining information as to property liable to be assessed for taxation, under any of the laws of this state; or if any person shall refuse to appear before the state tax commissioners, or any member thereof, when subpoenaed so to do, or shall upon such appearance fail or refuse to testify, he shall be guilty of a misdemeanor, and fined not exceeding one thousand dollars, or imprisoned in the state's prison not exceeding two years, or both, in the discretion of the court.—Rev., 3792.

CHAPTER XXXVII.

SAFETY.

761. Automobiles regulated.—All persons riding on bicycles, tricycle, tandem bicycle, locomobile, automobile or other motor vehicle, shall on meeting carriages or vehicles, keep to the right so as to leave two-thirds of the road free: Provided, however, that any person operating a locomobile, automobile, motor cycle or other motor vehicle on any public road or highway or in any public place shall not operate the same at a rate of speed greater than is reasonable and proper, having regard to the use in common of such highway or place, or so as to endanger the life or limb of any person; and in no event shall such locomobile, automobile, motor cycle or other motor vehicle be operated at a greater speed than six miles an hour in the business and closely built up portion of any municipality of or in Guilford, Wake and Wayne counties, nor more than ten miles an hour in the other portions of such municipalities, nor more than fifteen miles an hour outside such municipalities in said counties: Provided, that at a sharp curve in any public road or highway, or at a crossing of the same, the rate of speed shall not exceed four miles an hour, which rates of speed in any municipality in said counties shall not be diminished nor prohibited by any ordinances, rule or regulation of any such municipality, board or other authorities unless the public safety shall require it: and provided, that any person or persons operating a locomobile, automobile, motor cycle or other motor vehicle on any such public road or highway, any public street or place in said county, shall at request or on signal by putting up the hand from the person riding, leading or driving a horse, or horses, or other animals, bring such locomobile, automobile, motor cycle or other motor vehicle immediately to a stop, and, if traveling in the opposite direction, shall remain stationary so long as may be reasonably necessary to allow such horse, horses or animals to pass (and in case such horse, horses or other animal appear to be frightened, and he is requested so to do, the person operating such locomobile, automobile, motor cycle or other motor vehicle shall cause the

motor thereof to cease running so long as shall be necessary to prevent accident and insure the safety of persons using such public road, highway or public place), and if traveling in the same direction, use reasonable care and caution in thereafter passing such horse, horses or other animal, and be under the same restrictions as are herein provided relating to stopping at request or on signal by putting up the hand: and provided, that such locomobile, automobile, motor cycle or other vehicle shall during the period from one hour after sunset to one hour before sunrise exhibit a lamp, or lamps, showing a white light or lights for a reasonable distance in the direction toward which such vehicle is proceeding, and also showing a red light or lights in the reverse direction, and shall also be provided with (and use at all proper and necessary times) a good and sufficient brake and a suitable bell, horn or other signal; and no person shall, through mischief or without reasonable cause, request any person or persons operating a locomobile, automobile, motor cycle or other motor vehicle, or signal him by putting up the hand, to stop. If any person purposely and wilfully neglects or refuses to comply with or violates any of the provisions of this section, or in any other manner wilfully hinders or purposely obstructs any person in the free passage of any such road or highway, he shall be guilty of a misdemeanor, and on conviction thereof before any justice of the peace or other court having jurisdiction, for every such offense, be fined not more than fifty dollars or imprisoned not more than thirty days. It shall be the duty of the owner or other person operating a locomobile or automobile in the counties of Guilford, Wake and Wayne to attach to the front and on the rear of any such locomobile or automobile or other motor vehicle the number of such machine in plain letters so as to easily be read, with a metal plate attached to or suspended from said vehicle or machine, and to register the number of said machine with the clerk of the superior court in a book kept for that purpose by him with the name of the owner set opposite such number.—Laws 1907, c. 612.

Note.—By its caption this act refers only to the counties of Guilford, Wake and Wayne. Query, as to whether its language gives it wider effect.

762. Automobiles, ordinances regulating.—If any person shall violate an ordinance prescribed by the board of commissioners of a county regulating the speed of automobiles, motor-cycles and other like vehicles, or governing the use of the same, he shall be guilty of a misdemeanor, and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. This section shall not apply to Mecklenburg or New Hanover counties.—Rev., 3793.

763. Dynamite cartridges, exploding.—If any person shall fire off, explode, or cause to be fired off or exploded, except for mechanical purposes in a legitimate business, any dynamite cartridge, bomb, or other explosive of a like nature, he shall be guilty of a misdemeanor.—Rev., 3794.

764. Exposing children to fire.—If any person shall leave any child, of the age of seven years or less, locked or otherwise confined in any dwelling, building or enclosure, and go away from said dwelling, building or enclosure, without leaving some person or persons of the age of discretion in charge of the same, and so as to expose said child or children to danger by fire, such person so offending shall be guilty of a misdemeanor, and shall be punished at the discretion of the court.—Rev., 3795.

765. Marl beds, failure to enclose.—If any person shall open any marl bed without surrounding it with a lawful fence, he shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days: Provided, this shall not apply to any person whose marl bed is enclosed inside his own enclosure.—Rev., 3796.

766. Mines.—If any person shall knowingly violate any of the provisions of the law relating to mines, or shall do anything whereby the life or health of persons or the security of any mine and machinery is endangered, or if any miner or other person employed in any mine governed by the statutes shall intentionally or wilfully neglect or refuse to securely prop the roof of any working place under his control, or neglect or refuse to obey any orders given by the superintendent of a mine in relation to the security of a mine in the part thereof where he is at work and for fifteen feet back of his working place, or if any miner, workman or other person shall knowingly injure any water-gauge, barometer, air course or brattice, or shall obstruct or throw open any air ways, or shall handle or disturb any part of the machinery of the hoisting engine or signaling apparatus or wire connected therewith, or air-pipes or fittings, or open a door of the mine, and not have the same closed again, whereby danger is produced either to the mine or those that work therein, or shall enter any part of the mine against caution, or shall disobey any order given in pursuance of law, or shall do any wilful act whereby the lives and health of the persons working in the mines or the security of the mine or the machinery thereof is endangered, or if the person having charge of a mine, whenever loss of life occurs by accident connected with the machinery of such mine or by explosion, shall neglect or refuse to give notice thereof forthwith by mail or otherwise to the inspector and to the coroner of the county in which such mine is situated, or if any such coroner shall neglect or refuse to hold an inquest upon the body of the person whose death has been thus caused, and return a copy of his findings and a copy of all the testimony to the inspector, he shall be guilty of a misdemeanor, and upon conviction fined not less than fifty dollars or imprisoned in the county jail not more than thirty days, or both.—Rev., 3797.

767. Owner of building failing to comply with law.—If the owner or builder erecting any new building, upon notice from the local inspector, shall fail or refuse to comply with the terms of the notice by correcting the defects pointed out in such notice, so as to make such building comply with the law as regards new buildings, he shall be guilty of a misdemeanor, and shall be fined not exceeding fifty dollars. Every week during which any defect in the building is wilfully allowed to remain after notice from the inspector shall constitute a separate and distinct offense. This section shall not apply to any town which may be exempt from the law regarding the inspection of buildings.—Rev., 3798.

768. Removing notice from condemned buildings.—If any person shall remove any notice which has been affixed to any building by the local inspector of any city or town, which notice shall state the dangerous character of the building, he shall be guilty of a misdemeanor, and be fined not less than ten nor more than fifty dollars for each offense.—Rev., 3799.

769. Street cars to have vestibule fronts.—If any city and street passenger railway company shall refuse or fail to use vestibule fronts, or frontage not less than four feet, on all passenger cars run, manipulated or transported by them on their lines during the latter half of the month of November and during the months of December, January, February and March of each year, except in cases of temporary emergency in suitable weather, not to exceed four days in any one month within the period herein prescribed for use of vestibule fronts, such company shall be guilty of a misdemeanor, and shall be subject to a fine of not less than ten dollars or more than one hundred dollars for each day: Provided, that said companies shall not be required to close the sides of said vestibules. The North Carolina corporation commission is hereby authorized to make exemptions from the provisions of this section in

such cases as in their judgment the enforcement of this section is unnecessary.—Rev., 3800.

770. Street cars to have fenders.—If any city and street passenger railway company shall refuse or fail to use practical fenders in front of all passenger cars run, manipulated or transported by them, such company shall be guilty of a misdemeanor and shall be subject to a fine of not less than ten dollars or more than one hundred dollars for each day. The North Carolina corporation commission is hereby authorized to make exemptions from the provisions of this section in such cases as in their judgment the enforcement of this section is unnecessary.—Rev., 3801.

771. Unsafe buildings allowed to stand.—If the owner of any building which has been condemned as unsafe and dangerous by any local inspector, after being notified by the inspector in writing of the unsafe and dangerous character of such building, shall permit the same to stand or continue in that condition, he shall forfeit and pay a fine of not less than ten nor more than fifty dollars for each day such building continues after such notice. This section shall not apply to towns and cities exempt from the law governing the inspection of buildings.—Rev., 3802.

CHAPTER XXXVIII.

SALES.

772. Butchers to keep record.—If any butcher shall fail to keep a book of registration and register the ear mark, brand or flesh-mark of all cattle, sheep, swine or goats, and the name of the parties purchased from in said registration, and the date of said purchase, which registration shall be open to the inspection of all persons, he shall be guilty of a misdemeanor, and upon conviction shall pay a fine of fifty dollars for each offense: Provided, this shall only apply to the counties of Rockingham, Bertie, Edgecombe, Halifax, Martin, Orange, Pitt, Wilson, Wayne, Jones, Warren, Johnston, Richmond, Northampton, Franklin, Craven and Chowan; and Warsaw township in Duplin county.—Rev., 3803.

773. Cigarettes to minors.—If any person shall sell, give away or otherwise dispose of, directly or indirectly, cigarettes, or tobacco in the form of cigarettes, or cut tobacco in any form or shape which may be used or intended to be used as a substitute for cigarettes, to any minor under the age of seventeen years; or if any person shall aid, assist or abet any person in selling such articles to such minor, he shall be guilty of a misdemeanor, and upon conviction shall be punished by fine or imprisonment in the discretion of the court.—Rev., 3804.

774. Cigarettes to minors, aiding.—If any person shall aid or assist any minor child under seventeen years of age in obtaining the possession of cigarettes, or tobacco in any form used as a substitute therefor, by whatsoever name it may be called, he shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court.—Rev., 3805.

775. Cocaine, opium, morphine.—If any person shall sell by retail or give away any preparation containing more than thirty per cent of cocaine, morphine or opium, except upon the written prescription of a reputable practicing physician, veterinary surgeon or dentist licensed under the laws of the state, which said prescription shall not be refilled unless so directed by the attending physician, except in cases of emergency and in the absence of a physician, he shall be guilty of a misde-

meanor, and shall be imprisoned not exceeding thirty days, or fined not exceeding fifty dollars. No veterinary surgeon shall be allowed to prescribe for a human being, or to sell, give away, or in any manner dispose of the drugs mentioned in this section except for the use of dumb animals. The provisions of this section shall not apply to sales at wholesale by any manufacturer or wholesale dealer who shall sell to retail druggists in original packages only.—Rev., 3806.

776. Concentrated feeding stuff, taxes not paid.—If any manufacturer, importer, jobber, agent or seller shall sell, offer or expose for sale, or for distribution in this state, any concentrated commercial feeding stuff as defined by law without complying with the requirements of the law as to branding the same, and as to filing samples with the commissioner of agriculture, or tagging the same, and paying the tax thereon, or in any other way shall sell or offer or expose for sale or distribution any concentrated commercial feeding stuff which contains substantially a smaller percentage of constituents than are certified to be contained, or who shall adulterate any feeding stuff with foreign, mineral or other substance or substances, or with substances injurious to the health of domestic animals, he shall be guilty of a misdemeanor, and shall be fined not exceeding fifty dollars for each offense, or imprisoned not exceeding thirty days, and the lot of feeding stuff in question shall, in addition, be subject to seizure, condemnation and sale by the commissioner of agriculture, as prescribed for the seizure, condemnation and sale of commercial fertilizers in this state. The proceeds from sales under seizure shall be covered into the state treasury for the use of the department of agriculture in executing the provisions of this section.—Rev., 3807.

777. Commercial feeding stuffs.—If any person shall violate any regulation adopted by the board of agriculture for the enforcement of the law in reference to the sale of concentrated commercial feeding stuffs, he shall be guilty of a misdemeanor.—Rev., 3808.

778. Corn, in certain counties.—If any person shall buy, sell, deliver, or receive for a price or for any reward whatever, any corn in the ear or shelled of a less amount than five bushels, between the hours of sunset and sunrise, he shall be guilty of a misdemeanor, and upon conviction be punished by a fine not exceeding fifty dollars or imprisoned not exceeding thirty days. In all prosecutions under this section it shall only be necessary for the state to allege and prove that the defendant bought or received the corn as charged, and the burden shall be upon the defendant to show that the provisions of this section have been complied with: Provided, this section shall only apply to the counties of Beaufort, Hyde, Martin, Tyrrell, Washington, Pamlico, Halifax and Edgecombe.—Rev., 3809.

779. Corn meal.—If any person shall pack for sale, sell or offer for sale in this state any corn meal except in bags or packages containing by standard weight two bushels or one bushel or one-half bushel or one-fourth bushel or one-eighth bushel respectively, each bag or package of corn meal shall have plainly printed or marked thereon whether the meal is "bolted" or "unbolted," the amount it contains in bushels or fraction of a bushel, and the weight, he shall be guilty of a misdemeanor and fined not exceeding fifty dollars, or imprisoned not exceeding thirty days: Provided, the provisions of this section shall not apply to the retailing of meal direct to customers from bulk stock when priced and delivered by actual weight or measure.—Rev., 3810.

780. Cotton; inspection and sale of, in certain counties.—If any buyer of baled cotton shall fail to inspect all baled cotton when purchased and before the same is delivered, or shall make any deduction from the price agreed to be paid therefor on account of any inspection made after delivery of the same, he shall be guilty of a misdemeanor,

and upon conviction thereof shall be fined not more than fifty dollars or imprisoned not exceeding thirty days. This section shall apply only to the counties of Stanly, Cabarrus, Montgomery, Anson, Catawba, Richmond and Rowan: Provided, this section shall not have the effect to prevent a deduction or rebate on the price agreed for fraudulent baling or packing of cotton or to prevent an indictment for false pretenses in the counties of Montgomery, Rowan and Stanly.—Rev., 3811.

781. Cotton in seed, and peanuts; sale of.—If any person shall buy, sell, deliver or receive for a price, or for any reward whatever, any cotton in the seed where the quantity is less than what is usually baled, or any peanuts, and shall fail to enter upon a book to be kept by him for such purpose the date of such buying or receiving, the number of pounds in each lot, the person or persons from whom bought or received, the name of the owner of the land on which such cotton is raised, and the price paid for the same per pound, which book shall be open to inspection by the public at all business hours of the day, he shall be guilty of a misdemeanor, and upon conviction be punished by a fine not exceeding fifty dollars or imprisoned not exceeding thirty days. In all prosecutions under this section it shall only be necessary for the state to allege and prove that the defendant bought or received the seed cotton or peanuts as charged, and the burden shall be upon the defendant to show that the provisions of this section have been complied with.—Rev., 3812.

782. Cotton; sale of, at night.—If any person shall buy, sell, deliver or receive, for a price, or for any reward whatever, any cotton in the seed, or any unpacked lint cotton, brought or carried in a basket, hamper or sheet, or in any mode where the quantity is less than what is usually baled, or where the cotton is not baled, between the hours of sunset and sunrise, such person so offending shall be guilty of a misdemeanor. On conviction, in Mecklenburg and Nash counties, the offender shall be imprisoned not less than three months nor more than twelve months, and shall also be liable to a penalty of two hundred dollars, one-half of which shall go to the party suing for same and one-half to the public schools of the county.—Rev., 3813.

783. Cotton-seed meal; sale of, not having been inspected.—If any person shall sell or offer for sale any cotton-seed meal, which has not been inspected and branded as required by law, or shall sell any cotton-seed meal containing a less quantity of ammonia than is authorized by law, or shall violate any regulation or rule made by the state board of agriculture regulating the sale, inspection, branding or tagging of cotton-seed meal, he shall be guilty of a misdemeanor.—Rev., 3814.

784. Cotton weigher failing to file oath.—Every public weigher of cotton shall, before entering on the duties of his office, make and subscribe the oath prescribed for cotton weighers, which, when made, shall be filed in the office of the register of deeds for the county in which the person acts as weigher, and said register shall make a note of the same, and any person acting as weigher without making and filing the oath, shall be guilty of a misdemeanor, and shall be fined twenty-five dollars for every bag, bale or package of cotton which he shall have unlawfully weighed before being qualified to do so.—Rev., 3815.

785. Cotton, weighing of.—If any weigher or purchaser of cotton shall make any deduction from the weight of any bag, bale or package of lint cotton, for or on account of the draft, turn or break of the scales, steelyards, or other implement used in weighing the same, or for any other cause except as herein allowed, the person so offending shall be guilty of a misdemeanor, and fined three hundred dollars or imprisoned, in the discretion of the court: Provided, that the weigher may make

such proper deduction as shall be agreed on by him and the seller or his agent for water, dirt or other foreign substance, in or on such bag, bale, or package of cotton, or for other just cause.—Rev., 3816.

786. Dynamite; selling, without a license.—If any dealer or other person shall sell, or keep for sale any dynamite cartridges, bombs, or other combustibles of a like kind, without first having obtained from the board of commissioners of the county where such person or dealer resides a license for that purpose, he shall be guilty of a misdemeanor.—Rev., 3817.

787. Fertilizers containing matter not available as plant food.—If any person shall wilfully sell or offer for sale any fertilizer or fertilizer material which contains hair, hoof-meal, horn, leather scraps or other deleterious substances not available as food for plants, but in which said forbidden materials aid in making up the required or guaranteed analysis, he shall be guilty of a misdemeanor.—Rev., 3818.

788. Fertilizers; officers and agents of transportation companies to furnish information.—If any officer, agent, or manager of any railroad, steamboat or other transportation company transporting fertilizers or fertilizing material into this state shall, when required by the department of agriculture so to do, fail or refuse to furnish monthly statements of the quantity of such fertilizers with the names of the consignor and consignee and the name of the brand delivered on their respective lines at all points within this state, or shall fail or refuse to submit the books of such transportation company for examination, he shall be guilty of a misdemeanor.—Rev., 3819.

789. Fertilizers; removal or sale of, after condemned.—If any fertilizer shall be condemned, as by law provided, it shall be the duty of the agricultural department to have an analysis made of the same and cause printed tags or labels expressing the true chemical ingredients of the same to be put upon each bag, barrel or package, and shall fix the commercial value thereof at which it may be sold, and any person who shall sell, offer for sale or remove any such fertilizer, or any agent of any railroad or other transportation company who shall deliver any such fertilizer in violation of this section shall be guilty of a misdemeanor.—Rev., 3820.

790. Fertilizers; violation of regulations.—If any person shall wilfully violate any regulation made by the commissioner and board of agriculture concerning the sale of commercial fertilizers, seeds, and food products, he shall be guilty of a misdemeanor.—Rev., 3821.

791. Fertilizers, without tags.—If any person shall sell or offer for sale any fertilizer or fertilizing material not having attached thereto the tags and labels required by law, he shall be guilty of a misdemeanor.—Rev., 3822.

792. Future delivery contracts.—If any person shall become a party to any contract for the sale and future delivery of any article of personal property in which it is not intended by the parties thereto that such property shall be actually delivered, but the difference between the contract price and the market price on the day of delivery shall be paid in money, or if any person shall be the agent, directly or indirectly, of any such party in making or furthering or effectuating the same; or if any agent or officer of any corporation shall, in any way or manner, knowingly aid in making or furthering any such contract to which such corporation shall be a party, he shall be guilty of a misdemeanor, and on conviction shall be fined not less than one hundred dollars nor more than five hundred dollars, and may be imprisoned in the discretion of the court.—Rev., 3823.

793. Future delivery; contract made in another state.—If any person shall, while in this state, consent to become a party to any contract contrary to preceding sections, made in another state, or if any person shall, as agent of any person or corporation become a party to any such contract made in another state, or in this state do any act, or in any way aid in the making or furthering such contract so made in another state, he shall be guilty of a misdemeanor, and on conviction shall be fined not less than fifty nor more than two hundred dollars, and may be imprisoned, in the discretion of the court.—Rev., 3824.

794. Futures, office for sales of.—If any person, corporation or other association of persons, either as principal or agents, shall establish or open an office or other place of business in this state for the purpose of carrying on or engaging in any business of making contracts to sell and deliver any cotton, indian corn, wheat, rye, oats, tobacco, meal, lard, bacon, salt pork, salt fish, beef cattle, sugar, coffee, stocks, bonds, and choses in action, at a place and at a time specified and agreed upon therein, to any other person, whether the person to whom such article is so agreed to be sold and delivered shall be a party to such contract or not, when, in fact, and notwithstanding the terms expressed of such contract, it is not intended by the parties thereto that the articles or things so agreed to be sold and delivered shall be actually delivered, or the value thereof paid, but it is intended and understood by them that money or other thing of value shall be paid to the one party by the other, or to a third party, the party to whom such payment of money or other thing of value shall be made to depend, and the amount of such money or other thing of value so to be paid to depend upon whether the market price or value of the article so agreed to be sold and delivered is greater or less at the time and place so specified than the price stipulated to be paid and received for the articles so to be sold and delivered; or for making contracts commonly called "futures" as to the several articles and things hereinbefore specified, or any of them, by whatever name called, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined and imprisoned at the discretion of the court.—Rev., 3825.

795. Futures, office for sales of; evidence.—No person shall be excused on any prosecution under the three next preceding sections from testifying touching anything done by himself or others contrary to the provisions of such sections, but no discovery made by the witness upon such examination shall be used against him in any penal or criminal prosecution, and he shall be altogether pardoned of the offense so done or participated in by him. In all such prosecutions proof that the defendant was a party to a contract as agent or principal to sell and deliver any article, thing or property specified or named in such sections, or that he was the agent, directly or indirectly of any party in making, furthering or effectuating the same, or that he was the agent or officer of any corporation or association or person in making, furthering or effectuating the same, and that the article, thing or property agreed to be sold and delivered was not actually delivered, and that settlement was made or agreed to be made upon the difference in value of said article, thing or property, shall constitute against such defendant prima facie evidence of guilt. Proof that any person, corporation or other association of persons, either as principals or agents, has established an office or place where are posted or published from information received the fluctuating prices of grain, cotton, provisions, stocks, bonds and other commodities, or of any one or more of the same, shall constitute prima facie evidence of being guilty of violating the three preceding sections.—Rev., 3826.

796. Metals, sale of, regulated.—See section 706 infra.—Laws 1907, c. 464.

797. Obstructing inspector of concentrated feeding stuff in duties.—

If any person shall impede, obstruct, hinder or otherwise prevent or attempt to prevent any inspector or other person in the performance of his duty in collecting samples, or otherwise in connection with the inspection or sale of concentrated feed stuffs, he shall be guilty of a misdemeanor, and be fined not more than fifty dollars or imprisoned not more than thirty days.—Rev., 3827.

798. Oleomargarine sold without label.—

If any person shall sell, keep for sale, or offer for sale any oleomargarine or butterine, without having securely affixed on each package, tub or firkin thereof, a label on which shall be printed in large roman type the chemical ingredients and the proportions thereof, he shall be guilty of a misdemeanor, and upon conviction shall be fined not less than fifty dollars, or be imprisoned not exceeding thirty days; and for each subsequent offense be fined not less than two hundred dollars or imprisoned not less than six months, or both, in the discretion of the court. For the purposes of this section any article manufactured or compounded in imitation or semblance of butter, or which shall be composed of any ingredient in combination with butter, shall be deemed to be oleomargarine and butterine.—Rev., 3828.

799. Poisons; sale regulated.—

If any person shall retail any poison enumerated in schedules A and B of this section, without distinctly labelling the bottle, box, vessel or paper in which said poison is contained, with the name of the article, the word "poison," a vignette representing a skull and bones, and the name and place of business of the seller; or if any person shall sell or deliver any poison enumerated in said schedules A. and B, unless upon due inquiry it be found that the purchaser is aware of its poisonous nature, and represents that it is to be used for a legitimate purpose; or if any person shall sell any poison included in schedule A without, before delivering the same to the purchaser, causing an entry to be made in a book kept for that purpose, stating the date of the sale, the name and address of the purchaser, the name and quantity of the poison sold, the purpose for which it is represented by the purchaser to be required, and the name of the dispenser, such book to be always open to proper authorities for inspection, he shall be guilty of a misdemeanor, and be liable for all damages arising from such sale.

Schedule A.—Arsenic and its preparations, corrosive sublimate, white precipitate, red precipitate, biniodide of mercury, cyanide of potassium, hydrocyanic acid, strychnine, and essential oil of bitter almonds.

Schedule B.—Aconite, belladonna, colchicum, conium, nux vomica, henbane, savin, ergot, cotton root, cantharides, creosote, digitalis, and their pharmaceutical preparations, croton oil, chloroform, chloral hydrate, sulphate of zinc, carbolio acid, oxalic acid, opium and its preparations, except paregoric and other preparations of opium containing less than two grains to the ounce, and other deadly poisons. This section shall not apply to the dispensing of poison in usual doses and by physicians' prescriptions, nor to the sale of poisons by physicians in their actual practice, upon their own prescription; nor to the sale of such poisons by wholesale to pharmacists.—Rev., 3829.

800. Spirits of turpentine, adulteration of.—If any person shall adulterate or cause to be adulterated, any spirits turpentine, or shall knowingly sell or offer for sale as pure spirits turpentine, any adulterated spirits turpentine, he shall be guilty of a misdemeanor, and upon conviction shall be fined not less than fifty dollars, or imprisoned for thirty days.—Rev., 3830.

801. Tobacco warehousemen required to keep and furnish accounts of sales.—On and after the first day of August, one thousand nine hundred and seven, the proprietor of each and every leaf tobacco ware-

house doing business in this state shall keep a correct account of the number of pounds of leaf tobacco sold upon the floor of his warehouse daily. On or before the fifth day of each succeeding month the said warehouse proprietors shall make a statement, under oath, of all the tobacco so sold upon the floor of his warehouse during the past month, and shall transmit the said statement, at once, to the commissioner of agriculture at Raleigh, North Carolina. The reports so made to the commissioner of agriculture shall be so arranged and classified as to show the number of pounds of tobacco sold for the producers of tobacco from the first hand; the number of pounds sold for dealers; and the number of pounds resold by the proprietor of the warehouse for his own account or for the account of some other warehouse. The commissioner of agriculture shall cause said statements to be accurately copied into a book to be kept for this purpose, and shall keep separate and apart the statements returned to him from each leaf tobacco market in the state, so as to show the number of pounds of tobacco sold by each market for the sale of leaf tobacco; the number of pounds sold by producers, and the number of pounds resold upon each market. And the said commissioner of agriculture shall keep said books open to the inspection of the public, and shall, on or before the tenth day of each month, after the receipt of the reports above required to be made to him on or before the fifth day of each month, cause the said reports to be published in the Bulletin issued by the agricultural department, and in one or more journals published in the interest of the growth, sale and manufacture of tobacco in the state, or having a large circulation therein. Any person wilfully violating the provisions of this act shall be guilty of a misdemeanor and punished within the discretion of the court, and, in addition thereto, shall be subject to a penalty of five hundred dollars, to be sued for in the county of Wake by the attorney-general whenever he may be advised by the commissioner of agriculture that persons required by this act to make reports to him have failed to do so.—Laws 1907, c. 97.

802. Warehouse, unlawfully disposing of property stored in public.—

If any person unlawfully sells, pledges, lends or in any other way disposes of, or permits, or is a party to the unlawful selling, pledging, lending, or other disposition of any goods, wares, merchandise, or anything deposited in a public warehouse without the authority of the party who deposited the same, he shall be punished by a fine not to exceed two thousand dollars and by imprisonment in the state's prison for not more than three years, but no officer, manager or agent of such public warehouse shall be liable to the penalties provided in this section, unless with the intent to injure or defraud any person, he so sells, pledges, lends, or in any other way disposes of the same, or is a party to the selling, pledging, lending or other disposition of any goods, wares, merchandise, article or thing so deposited.—Rev., 3831.

803. Weapons to a minor.—If any person shall knowingly sell or offer for sale, give or in any way dispose of to a minor any pistol or pistol cartridge, brass knucks, bowie-knife, dirk, loaded cane, or sling-shot, he shall be guilty of a misdemeanor.—Rev., 3832.

CHAPTER XXXIX.

SCHOOLS.

804. Agents for sale of supplies not to be officers.—If any member of any board of directors, board of managers, board of trustees of any of the educational, charitable, eleemosynary or penal institutions of the

state, or any member of any board of education, or any county or district superintendent, or examiner of teachers, or any school trustee of any school or other institution supported in whole or in part from any of the public funds of the state, or any officer, agent, manager, teacher or employee of said boards shall have any pecuniary interest, either directly or indirectly, proximately or remotely, in supplying any goods, wares or merchandise of any nature or kind whatsoever for any of said institutions or schools; or if any of said officers, agents, managers, teachers or employees of said institution or school or state or county officer shall act as agent for any manufacturer, merchant, dealer, publisher or author for any article of merchandise to be used by any of said institutions or schools; or shall receive, directly or indirectly, any gift, emolument, reward or promise of reward for their influence in recommending or procuring the use of any manufactured article, goods, wares or merchandise of any nature or kind whatsoever to any of the said institutions or schools, he shall be forthwith removed from his position in the public service, and shall upon conviction be deemed guilty of a misdemeanor and fined not less than fifty dollars nor more than five hundred dollars and be imprisoned, in the discretion of the court.—Rev., 3833.

805. Books; selling, at greater than contract price.—If any dealer, clerk or agent shall sell any book adopted by the text-book commission for a greater price than the contract price, he shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding fifty dollars.—Rev., 3834.

806. Buying supplies from interested officer.—If any county board of education or school committee shall buy school supplies in which any member has a pecuniary interest, or if any school officer or teacher shall receive any gift, emolument, reward or promise of reward for influence in recommending or procuring the use of any school supplies for the schools with which they are connected, such person shall be removed from his position in the public service and shall, upon conviction, be deemed guilty of a misdemeanor.—Rev., 3835.

807. Census returns, false.—If any person who is a member of the school committee of any district, as such, shall knowingly and wilfully take false or inaccurate census, or make a false or inaccurate return or report to the county superintendent of public instruction of the number of children in his district between the ages of six and twenty-one, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined and imprisoned at the discretion of the court.—Rev., 3836.

808. Duty, failure of officer to discharge.—If any officer shall fail to perform any of the duties required of him, in regard to the appropriation or distribution of the fund to bring the schools up to a four months' term or shall knowingly make any misrepresentation of facts in any report required of him in reference to such fund, he shall be guilty of a misdemeanor, and upon conviction shall be removed from his office and fined or imprisoned, in the discretion of the court.—Rev., 3837.

809. Disturbing.—If any person shall wilfully interrupt or disturb any public or private school or temperance society or organization or any meeting lawfully and peacefully held for the purpose of literary and scientific improvement, or for the discussion of temperance or question of moral reform, either within or without the place where such meeting or school is held, or injure any school building, or deface any school furniture, apparatus, or other school property, or property of any temperance society or organization, he shall be guilty of a misdemeanor, and fined not exceeding fifty dollars or imprisoned not more than thirty days.—Rev., 3838.

810. Treasurer failing to report.—If any treasurer of the county school fund shall fail to make reports required of him at the time and in the manner prescribed, or to perform any other duties required of him by law, he shall be guilty of a misdemeanor, and be fined not less than fifty dollars and not more than two hundred dollars, or imprisoned not less than thirty days, nor more than six months, in the discretion of the court.—Rev., 3839.

811.—Witness failing to appear and testify.—If any witness shall wilfully and without legal excuse fail to appear before the county board of education and testify in any matter under investigation by the board, he shall be guilty of a misdemeanor, and fined not more than fifty dollars or imprisoned not more than thirty days.—Rev., 3840.

CHAPTER XL.

SUNDAY.

812. Fishing with nets on.—If any person fish on Sunday with a seine, drag-net or other kind of net, except such as is fastened to stakes, he shall be guilty of a misdemeanor, and fined not less than two hundred nor more than five hundred dollars or imprisoned not more than twelve months.—Rev., 3841.

Note.—This section does not apply to Onslow county so far as established seines are concerned. 1885, c. 171; 1889, c. 23.

813. Hunting on.—If any person shall, except in defense of his own property, hunt on Sunday with a dog, or shall be found off his premises on Sunday, having with him a shotgun, rifle or pistol, he shall be guilty of a misdemeanor, and pay a fine not exceeding fifty dollars, or be imprisoned not exceeding thirty days.—Rev., 3842.

814. Hunting wild fowl on Sunday, and at night.—If any person shall hunt or shoot wild birds or fowl on Sunday; or hunt or shoot them, except crows and hawks, on any day of the week after the hour of sunset and before the hour of daylight, with gun or fire, or use any gun other than can be fired from the shoulder, he shall be guilty of a misdemeanor, and fined not less than one hundred dollars or imprisoned not less than thirty days.—Rev., 3843.

815. Running trains on.—If any railroad company shall permit the loading or unloading of any freight car on Sunday, or shall permit any car, train of cars, or locomotive to be run on Sunday on any railroad, except such as may be run for the purpose of transporting the United States mails, and passengers with their baggage, and ordinary express freight in an express car exclusively, and such as may be run by law, such railroad company shall be guilty of a misdemeanor in each county in which such car, train of cars or locomotive shall run, or in which any such freight car shall be loaded or unloaded, and upon conviction shall be fined not less than five hundred dollars for each offense: Provided, that the word Sunday in this section shall be construed to embrace only that portion of the day between sunrise and sunset; and that trains in transitu, having started on Saturday, may, in order to reach the terminus or shops, run until nine o'clock a. m. on Sunday, but not later, nor for any other purpose than to reach the terminus or shops.—Rev., 3844.

CHAPTER XLI.

TELEGRAPH AND TELEPHONE.

816. Lines, interfering with.—If any person shall unnecessarily disconnect the wire or in any other way render any telephone line or any part of any such line unfit for use in transmitting messages, or shall unnecessarily cut, tear down, or destroy, or in any way render unfit for the transmission of messages any part of the wire of a telephone line, he shall be guilty of a misdemeanor, and on conviction thereof shall be fined or imprisoned in the discretion of the court for a term not exceeding two years.—Rev., 3845.

817. Message; obtaining knowledge of contents.—If any person wrongfully obtain, or attempt to obtain, any knowledge of a telegraphic message by connivance with a clerk, operator, messenger, or other employee of a telegraph company; or, being such clerk, operator, messenger or other employee, wilfully divulge to any but the persons for whom it was intended, the contents of a telegraphic message or dispatch intrusted to him for transmission or delivery, or the nature thereof, or wilfully refuses or neglects duly to transmit or deliver the same, he shall be guilty of a misdemeanor.—Rev. 3846.

818. Poles and wires, injury to.—If any person shall wilfully injure, or destroy, or pull down, any telegraph or telephone or electric power transmission pole, wire, insulator or any other fixture or apparatus attached to a telegraph or telephone line, he shall be guilty of a misdemeanor, and fined and imprisoned at the discretion of the court.—Rev., 3847; Laws 1907, c. 827.

819. Telephone message, obtaining knowledge of.—If any person wrongfully obtain, or attempt to obtain, any knowledge of a telephonic message by connivance with a clerk, operator, messenger or other employee of a telephone company; or, being such clerk, operator, messenger or other employee, wilfully divulges to any but the persons for whom it was intended, the contents of a telephonic message or dispatch intrusted to him for transmission or delivery, or the nature thereof, he shall be guilty of a misdemeanor, and fined or imprisoned, or both, in the discretion of the court.—Rev., 3848.

820. Trees, felling, on wires.—If any person shall negligently and carelessly cut or fell any tree or any limb or branch therefrom in such a manner as to cause the same to fall upon or across any telephone wire or electric light wire, and from which any injury to such wire shall be occasioned, he shall be guilty of a misdemeanor, and shall also be liable to a penalty of fifty dollars for each and every offense.—Rev., 3849.

Note.—It seems that act 1907, c. 827, was meant to amend this section also, but by its language it refers only to section 3847 of the Revisal. It provides for the insertion of the words "or electric power transmission wire" after the words "or electric light wire."

CHAPTER XLII.

TRADEMARKS.

821. Forgery and counterfeiting; selling goods with counterfeit marks.—If any person shall vend any goods, wares or merchandise having thereon any forged or counterfeited marks, tokens, stamps, or labels purporting to be the marks, tokens, stamps or labels of any person being a resident of the United States, knowing the same at the time of the purchase thereof by him to be forged or counterfeited, he shall

be guilty of a misdemeanor, and punished by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one hundred dollars, or by both fine and imprisonment, at the discretion of the court.—Rev., 3850.

822. Forgery and counterfeiting; fraudulent use of brands.—If any person shall knowingly use the mark or brand of any other person on any sack, or shall knowingly impress on any sack the mark or brand of another person, with intent to defraud or for the purpose of enhancing the value of his own property, the person so offending shall be guilty of a misdemeanor, and punished as if convicted of larceny.—Rev., 3851.

823. Private marks, stamps, labels.—If any person shall knowingly and wilfully forge or counterfeit, or cause or procure to be forged or counterfeited, the private marks, tokens, stamps or labels of any mechanic, manufacturer or other person, being a resident of the United States, with intent to deceive and defraud the purchasers, mechanics or manufacturers of any goods, wares or merchandise whatsoever, upon conviction thereof he shall be punished by a fine of not less than fifty dollars and not exceeding one thousand dollars, or by imprisonment of not less than thirty days or more than five years, or both fine and imprisonment, at the discretion of the court.—Rev., 3852.

824. Larceny of branded timber.—If any person shall knowingly and unlawfully buy, sell, take and carry away, secrete, destroy or convert to his own use, any timber upon which a trademark is stamped, branded or otherwise impressed, or shall knowingly and unlawfully buy, sell, take and carry away, secrete, destroy or convert to his own use, any timber upon which a trademark has been intentionally and without lawful authority removed, defaced or destroyed, he shall be deemed guilty of larceny thereof and punished as in other cases of larceny.—Rev., 3853.

825. Timber trademark, use of.—If any person shall use or attempt to use any timber trademark without the written consent of the proprietor thereof, or falsely and fraudulently place any trademark on timber not the property of the owner of such trademark without his written consent, or intentionally and without lawful authority remove, deface or destroy any timber trademark or the imprint thereof on any timber, or intentionally put any such timber in such a position or place so remote from the stream from which it was taken, or on which it was afloat, as to render it inconvenient or unnecessarily expensive to replace the same in such stream, he shall be guilty of a misdemeanor.—Rev., 3854.

826. Timber mark, altering.—If any person shall wilfully change, alter, erase or destroy any registered timber mark or brand put or cut upon any logs, timber, lumber or boards, except by the consent of the owner thereof, with intent to steal the said logs or timber, he shall be guilty of a misdemeanor, and punished by a fine of not more than fifty dollars or imprisoned not more than thirty days, or both; if the same shall have been done with a felonious intent, such person shall be guilty of larceny, and punished as for that offense.—Rev., 3855.

827. Timber mark, taking possession of logs bearing.—If any person shall knowingly and wilfully take up or have in his possession any log, timber, lumber or board upon which a registered timber mark or brand has been put or cut, except by the consent of the owner thereof, he shall be guilty of a misdemeanor, and punished by a fine of not more than fifty dollars or imprisoned not more than thirty days, or both.—Rev., 3856.

827a. Vessels of bottlers protected.—Any and all persons, partnerships or bodies corporate engaged in manufacturing, bottling, selling or dealing in mineral, soda or aerated waters, beer, lager beer, milk or

other beverages, in kegs, boxes, trays, crates, bottles, syphons, barrels, casks, or in any other vessels, with his, her, its or their name or names or other marks or devices printed, branded, stamped, stenciled, engraved, etched, blown, impressed, or otherwise produced upon such kegs, boxes, trays, crates, bottles, syphons, barrels, casks, or any other vessels, or upon labels pasted on such kegs, boxes, trays, crates, bottles, syphons, barrels, casks, or such other vessels, shall file with the clerk of the superior court of the county in which his, her, its or their principal office or place of business (or in the case of a foreign corporation, its principal office or place of business or agency) is located, a description of the name or names, marks, labels or devices so used by him, her, it or them respectively, and cause such description to be printed twice a week for two successive weeks in some daily newspaper published in said county, if there be a daily newspaper published therein, and if not, then in some newspaper published in said county once a week for two successive weeks. The description of the name or names, marks or devices, before being filed as aforesaid, shall be signed by the person or persons filing the same, or in case of a partnership, by one or more of the partners, or in case of a corporation, by one of its officers or managers, and shall be acknowledged by the person or persons signing the same as the act of the said person or persons, or if the said person or persons sign the same for a partnership or corporation, as the act of said partnership or corporation, before any person or officer competent to take acknowledgments of deeds. The publication hereby required need only be a brief description sufficient for identification, of such name, names, marks, labels or devices, and need not contain a certified copy of the acknowledgment. The provisions of this act shall apply to all bottles, kegs, boxes, trays, crates, syphons, barrels, casks, or any other vessels upon which said name or names, marks, labels or devices shall appear as aforesaid, whether or not any of the same shall be in existence at the time of said filing and publication.

(2) The several clerks of the superior courts mentioned in the preceding section shall record in some book of record in their custody, respectively, all such descriptions filed with them, and also copies of the said advertisement in the newspaper certified to by the publishers of the said newspapers in which the same had been published, and said respective clerks shall furnish copies thereof, duly certified by them in the usual manner, to any person who may apply therefor, and shall receive for such recording of such copies a fee of fifty cents; and the certified copy of said descriptions and of the said advertisement and the said certificate of the said publishers of the said newspapers, when certified to under the hand of the clerk with whom the same are recorded, with the seal of his office attached, shall be evidence that the provisions of the preceding section have been complied with, and shall be prima facie evidence of the title of the person, persons, partnership or body corporate named therein, to the said kegs, boxes, trays, crates, bottles, syphons, barrels, casks, or any of the other vessels upon which the name, names, marks, labels or devices of such person, persons, partnership or body corporate may appear as described in said description.

(3) After any person, persons, partnership or body corporate shall have filed and published his, her, its or their description of such name or names, marks or devices, in accordance with the preceding provisions of this act, it is hereby declared to be unlawful for any and all other persons, partnerships, and bodies corporate to fill in any way kegs, boxes, trays, crates, bottles, syphons, barrels, casks or any other vessels upon which such name or names or other marks, labels or devices shall be printed, branded, stamped, stenciled, engraved, etched, blown, impressed or otherwise produced, with mineral, soda or aerated waters, beer, porter, ale, cider, ginger-ale, small beer, lager beer, milk,

or other beverages, or to deface, erase, obliterate, cover up or otherwise remove or conceal any such name or names or other marks, labels or devices thereon, with intent to convert the same to his or her use, or to have on sale, offer for sale, buy, sell, take, give, receive, handle in the course of business, hire, rent, lend, transport, carry in wagons, carts, push-carts or other vehicles, or to take or collect from ash or garbage receptacles or from public or private dumps, cellars, yards, lots or premises, or to keep in stock or otherwise store or otherwise dispose of or deal or traffic in same or any thereof, or any parts or pieces of the same or any thereof, without the written consent of the person, persons, partnership or body corporate whose name or names or other marks, labels or devices shall be or shall have been in or upon said kegs, boxes, trays, crates, bottles, syphons, barrels, casks, or other vessels, or to wilfully break, destroy or otherwise injure any of the articles mentioned in this section. And any person, persons, partnership or body corporate who shall do any of the acts declared to be unlawful by this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished for the first offense by imprisonment of not less than ten days or more than one year, or by a fine of three dollars, for each of such kegs, casks or barrels, and one dollar for each of such boxes, trays, crates, bottles, syphons, or any other vessels so unlawfully used, filled, kept on sale, or offered for sale, sold, bought, given, taken, received, handled in the course of business, hired, rented, lent, transported, carried in wagons, carts, push-carts, or vehicles of any kind, or taken or collected from ash or garbage receptacles, or from public or private dumps, cellars, yards, lots or premises, or kept in stock or otherwise stored or otherwise disposed of, dealt in or trafficked in; and for the second offense and subsequent offenses, by imprisonment for not less than twenty days or more than one year, or by a fine of not less than two dollars or more than five dollars for each of said kegs, casks, barrels, trays, crates, bottles, syphons, or any other vessels so unlawfully used and filled, kept on sale, offered for sale, sold, bought, given, taken, received, handled in the course of business, hired, rented, lent, transported, carried in any wagons, carts, push-carts, or vehicles of any kind, or taken or collected from ash or garbage receptacles, or from public or private dumps, cellars, yards, lots, or premises, or kept in stock or otherwise stored, or otherwise disposed of, dealt in or trafficked in, or by both such fine and imprisonment, at the discretion of the court or justice of the peace before whom such offense is tried. In the event of a fine or fines being imposed by any court or justice of the peace for any offenses under this act, one-half thereof shall go to the state and one-half to the informer, to be collected as other fines are collected: Provided, this section shall not apply to such bottles, kegs and other vessels as the bottler charges his customers or purchasers for at the time of sale of the goods.

(4) If any person shall be found to be in possession of any one or more of the kegs, boxes, trays, crates, bottles, syphons, barrels, casks, or any other vessels mentioned in section one of this act, or any part or parts thereof, and the person or persons, partnership or body corporate, the name or names, marks or devices of whom have been placed thereon by any of the methods mentioned in the said section, have complied with the provisions of this act, and the persons so found to be in possession thereof shall be charged with any of the offenses mentioned in section three of this act, then such possession shall be prima facie evidence that such person is guilty of such offenses so charged: Provided, this section shall not apply to bottlers who receive such bottles, cases, kegs and other packages in the course of business and mixed and exchanged in shipment, when such bottler within a reasonable time notifies the owners thereof of the location thereof.

(5) If the owner or owners of any such keg, box, tray, crate, bottle, syphon, barrel, cask, or any other vessel mentioned in section one of this act, who has or have complied with the provisions of such section, or his, her, its or their officer, agent or employee shall make an affidavit before any justice of the peace asserting that he, she, it or they has or have reason to believe and does or do believe that any person or persons or body corporate is or are in actual or constructive possession of, or is or are making use of any one or more of any such articles above mentioned, or any parts thereof, or in any way declared to be unlawful in section three of this act, the said justice of the peace may issue his search warrant to any sheriff, deputy sheriff, constable or any other officer of the law to whom such warrant may be directed, and cause the premises designated in the warrant to be searched as in other cases in which such warrants are issued in accordance with the law of this state; and if one or more of any of such articles above mentioned or any parts of the same shall be found in, upon, or about the premises so designated, the officer executing such search warrant shall thereupon report the same, under his oath, to the said justice of the peace, who shall thereupon, upon said report and upon the oath of any person or persons charging any violations of section three of this article, issue his warrant for the arrest of the said person or persons against whom such charge or charges shall be made, and cause him or them, together with such articles, to be brought before him for trial.

(6) The several justices of the peace in the respective counties of this state shall have concurrent jurisdiction with the superior courts of their respective counties in the case of persons arrested for violation of the provisions of section three of this act, and such respective justices of the peace shall proceed to hear and determine such cases when the parties arrested on the charges of such violations are brought before them respectively, in all cases where the punishment fixed in this act is such as to give said justices of the peace jurisdiction under the constitution and laws of this state. And if such person or persons shall be found to be guilty of the violation of any of the provisions of this act, the court trying such person or persons and imposing the punishment herein prescribed shall also award possession to the owner of all the property involved in such violation.

(7) The requiring, taking or accepting of any deposit for any purpose upon any keg, box, tray, crate, bottle, syphon, barrel, cask or any other vessel shall not be deemed to constitute a sale of such property, either optional, conditional or otherwise, in any proceedings under this act.

(8) Any person or persons, partnerships, or body corporate that has or have heretofore filed and published a description of his, her, its or their name or names, marks or devices for the purposes mentioned in section one of this act, in accordance with the law existing at the time of such filing and publication, shall not be required to again file such description, but shall be entitled to all the benefits of this act as fully as if he, she, it or they had complied with all the provisions thereof.

(9) The provisions of this act shall not apply to any person who has taken, given, received, or is using such kegs, boxes, trays, crates, bottles, syphons, barrels, casks, or any other vessels for consumption of the mineral, soda or aerated waters, beer, porter, ale, cider, ginger ale, small beer, lager beer, milk, or other beverages placed therein by the owners, or who after consumption of said contents, is in possession of the same, while awaiting the return of the owners, nor shall the provisions of this act apply to any garbage man collecting the same in the regular course of his business: Provided, this act shall not apply to beer and mineral water bottles shipped into this state from other states.—Laws 1907, c. 901.

CHAPTER XLIII.

USURY.

828. Charging usury; refusing receipts; refusing to surrender paid papers.—Any person, firm or corporation who shall or may loan money in any manner whatsoever by note, chattel mortgage, conditional sale, or otherwise, upon any article or articles of household or kitchen furniture, and shall or may take, receive, reserve or charge a greater rate of interest than six per cent, either before or after the interest may accrue, or who shall refuse to give receipts for payments on interest or principal of such debts, or who shall fail and refuse to surrender the note and security when the same is paid off or a new note and mortgage is given in renewal, unless said new mortgage shall state the amount still due by said old note or mortgage and that the new one is given as additional security, shall be guilty of a misdemeanor, and in addition thereto shall forfeit double the interest which has been theretofore paid.—Laws 1907, c. 110.

CHAPTER XLIV.

WATERSHEDS.

829. Depositing human excreta on.—If any person shall collect and deposit human excreta on the watershed of any public water supply, he shall be guilty of a misdemeanor, and punished by fine and imprisonment, in the discretion of the court.—Rev., 3857.

830. Discharging sewerage into certain streams.—If any person, firm, corporation or other officer of any municipality having a sewerage system in charge shall violate the provision of law relating to discharging sewerage into streams from which public drinking water is taken, he shall be guilty of a misdemeanor.—Rev., 3858.

831. Disobeying instructions.—If any person residing on or owning property on a watershed of any stream from which public drinking water is obtained shall fail to comply with the provisions of the law for protection of such water supply, he shall be guilty of a misdemeanor, and punished by a fine of not less than two dollars nor more than twenty-five dollars, or by imprisonment for not less than ten nor more than thirty days.—Rev., 3859.

832. Failure to provide system for protection of watershed.—If any person or municipality shall violate the provisions of law for protecting watersheds by failing to provide tub system for human excrement, as required by law, he shall be guilty of a misdemeanor, and fined or imprisoned, in the discretion of the court.—Rev., 3860.

833. Inspection of.—When waterworks are owned and operated by any city or town, failure on the part of the municipal officials having in charge the management of the waterworks to comply with the law requiring sanitary inspection of watersheds shall be a misdemeanor, and punished by a fine of not less than ten nor more than twenty-five dollars, or by imprisonment for not less than ten nor more than thirty days: Provided, the said official do not prove to the satisfaction of the court that in spite of reasonable effort and diligence on his part he was prevented, directly or indirectly, by his superiors from doing his duty in this respect, in which case said superior officer shall be deemed guilty of a misdemeanor and punished by a fine of not less than fifty nor more than two hundred dollars, or by imprisonment for not less than one nor more than six months.—Rev., 3861.

834. Polluting.—If any person shall defile, corrupt or pollute any well, spring, drain, branch, brook or creek, or other source of public water supply used for drinking purposes, in any manner, or deposit the body of any dead animal on the watershed of any such water supply, or allow the same to remain thereon, unless the same is buried with at least two feet cover, he shall be guilty of a misdemeanor, and fined and imprisoned in the discretion of the court.

Note.—For injuring water supply to public institutions, see s. 3862, of the *Revisal*.

Note.—For crimes relating to fishing, etc., see chapter Oysters and Fish. For crimes relating to terrapin, see chapter Oysters and Fish. For crimes relating to oysters, see chapter Oysters and Fish.

PART IV.

CIVIL PROCEDURE.

CHAPTER I.

DEFINITIONS.

835. Remedies.—Remedies in the courts of justice are divided into—

(1) Actions.

(2) Special proceedings.—Rev., 346.

836. Actions.—An action is an ordinary proceeding in a court of justice, by which a party prosecutes another party, for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment or prevention of a public offense.—Rev., 347.

837. Special proceedings.—Every other remedy is a special proceeding.—Rev., 348.

838. Kinds of actions.—Actions are of two kinds—

(1) Civil.

(2) Criminal.—Rev., 349.

839. Criminal action.—A criminal action is:

(1) An action prosecuted by the state as a party, against a person charged with a public offense, for the punishment thereof.

(2) An action prosecuted by the state, at the instance of an individual, to prevent an apprehended crime against his person or property.—Rev., 350.

840. Civil action.—Every other is a civil action.—Rev., 351.

841. Court, means clerk, when.—In those of the following enactments which confer jurisdiction or power, or impose duties, when the words "superior court," or "court," in reference to a superior court, are used, they mean the clerk of the superior court, unless otherwise specially stated, or unless reference is made to a regular term of the court, in which cases the judge of the court alone is meant.—Rev., 352.

CHAPTER II.

GENERAL PROVISIONS.

842. Remedies not merged.—Where the violation of a right admits both of a civil and a criminal remedy, the right to prosecute the one is not merged in the other.—Rev., 353.

843. One form of action.—The distinction between actions at law and suits in equity, and the forms of all such actions and suits, heretofore existing, are abolished, and there shall be hereafter but one form of action for the enforcement or protection of private rights, and the redress of private wrongs, which shall be denominated a civil action.—Rev., 354.

844. Parties known as plaintiff and defendant.—In such action, the party complaining shall be known as the plaintiff, and the adverse party as the defendant.—Rev., 355.

845. How party may appear.—A party may appear in actions or proceedings in which he is concerned either in person or by attorney.—Rev., 356.

846. Feigned issues abolished.—Feigned issues are abolished, and instead thereof, in the cases where the power formerly existed to order a feigned issue, or when a question of fact not put in issue by the pleadings, is to be tried by a jury, an order for the trial may be made by the judge, stating distinctly and plainly the question of fact to be tried; and such order shall be the only authority necessary for a trial.—Rev., 357.

847. Jurisdiction of clerk on procedure.—The clerk of the superior court shall have jurisdiction to hear and decide all questions of practice and procedure in this court, and all other matters whereof jurisdiction is given to the superior court, unless the judge of said court, or the court at a regular term thereof, be expressly referred to.—Rev., 358.

Note.—See s. 841.

CHAPTER III.

LIMITATIONS, GENERAL PROVISIONS.

848. When action commenced.—An action is commenced as to each defendant when the summons is issued against him.—Rev., 359.

849. Run from cause of action accrued; objection taken by answer.—Civil actions can only be commenced within the periods prescribed in this chapter, after the cause of action shall have accrued, except where in special cases a different limitation is prescribed by statute. But the objection that the action was not commenced within the time limited can only be taken by answer.—Rev., 360.

850. Deemed pleaded by insane party.—On the trial of any action or special proceeding to which an insane person has been made a party, such insane person shall be deemed to have pleaded specially any defense, and shall on trial have the benefit of any defense, whether pleaded or not; that might have been made for him by his guardian or attorney under the provisions of this chapter. And the court, at any time before the action or proceeding is finally disposed of, may order the bringing in, by proper notice, of one or more of the near relatives or friends of such insane person, and may make such other order as it may deem necessary for his proper defense.—Rev., 361.

851. Disabilities.—If a person entitled to commence an action, except for a penalty or forfeiture, or against a sheriff or other officer for an escape, be at the time the cause of action accrued, either,

1. Within the age of twenty-one years; or
2. Insane; or
3. Imprisoned on a criminal charge, or in execution under sentence for a criminal offense;

Then such person may bring his action within the times herein limited, after the disability shall be removed, except in an action for the recovery of real property, or to make an entry or defense founded on the title to real property, or to rents and services out of the same, when he shall commence his action, or make his entry within three years next after the removal of the disability, and at no time thereafter.—Rev., 362.

Note.—For disabilities in an action to recover land sold for taxes, see s. 2909 of the Revisal.

852. Disability of marriage.—In any action in which the defense of adverse possession is relied upon, the time computed as constituting such adverse possession shall not include any possession had against a feme covert during coverture prior to February thirteenth, one thousand eight hundred and ninety-nine.—Rev., 363.

853. Cumulative disabilities.—When two or more disabilities shall co-exist at the time the right of action accrues, or when one disability shall supervene an existing one, the limitation shall not attach until they all be removed.—Rev., 364.

854. Disability must exist when right of action accrues.—No person shall avail himself of a disability, unless it existed when his right of action accrued.—Rev., 365.

855. Defendant out of the state, action begun, judgment enforced, when.—If, when the cause of action accrue or judgment be rendered or docketed against any person, he shall be out of the state, such action may be commenced, or judgment enforced, within the time herein respectively limited, after the return of such person into this state, and if, after such cause of action shall have accrued or judgment rendered or docketed, such person shall depart from and reside out of this state, or remain continuously absent therefrom for the space of one year or more, the time of his absence shall not be deemed or taken as any part of the time limited for the commencement of such action, or the enforcement of such judgment.

This section shall apply to all actions that have accrued and judgments rendered, transferred or docketed since the twenty-fourth day of August, one thousand eight hundred and sixty-eight.—Rev., 366.

856. Death before limitation expires; action by or against executor, when.—If a person entitled to bring an action die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his representatives after the expiration of that time, and within one year from his death. If a person against whom an action may be brought die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced against his personal representative after the expiration of that time, and within one year after the issuing of letters testamentary or of administration, provided such letters are issued within ten years of the death of such person. But if the claim upon which such cause of action is based be filed with the personal representative within the time above specified, and the same shall be admitted by him, it shall not be necessary to bring an action upon such claim to prevent the bar: Provided, that no action shall be brought against the personal representative upon such claim after his final settlement.—Rev., 367.

857. Time of stay by injunction or prohibition.—When the commencement of an action shall be stayed by injunction or statutory prohibition, the time of the continuance of the injunction or prohibition shall be part of the time limited for the commencement of the action.—Rev., 368.

858. Time during controversy on probate of will or granting letters.—In reckoning time when pleaded as a bar to actions, that period shall not be counted which elapses during any controversy on the probate of a will or granting letters of administration, unless there be an administrator appointed during the pendency of the action, and it be provided that an action may be brought against him.—Rev., 369.

859. New action within one year after nonsuit, etc.—If an action shall be commenced with the time prescribed therefor, and the plaintiff be nonsuited, or a judgment therein be reversed on appeal, or be arrested, the plaintiff, or, if he die and the cause of action survive, his

heir or representative, may commence a new action within one year after such nonsuit, reversal, or arrest of judgment.—Rev., 370.

860. New promise must be in writing.—No acknowledgment or promise shall be received as evidence of a new or continuing contract, from which the statutes of limitations shall run, unless the same be contained in some writing signed by the party to be charged thereby; but this section shall not alter the effect of any payment of principal or interest.—Rev., 371.

Defendants will not be allowed to set up the statute of limitations where they have induced the plaintiff to delay bringing his action by promise to pay, until the said plaintiff was barred.—*Haymore v. Commissioners*, 84—268.

Where credits endorsed on a bond are relied on to rebut the statute, it is necessary for the plaintiff to show otherwise than by the endorsement that the same was made before the statute arose.—*White v. Beaman*, 85—3.

Payment of interest arrests the statute as to sureties as well as principal.—*Green v. Greensboro College*, 83—449.

Where there are more than one obligor to a bond, payments by one affects all the others, and the statute of limitations runs from such last payments as to all.—*Lowe v. Lowell*, 48—67.

The new promise, relied on to repel the bar of the statute of limitations, ought not to be in terms doubtful, but should clearly indicate the intention to renew the obligation, without modification.—*Wolfe v. Fleming*, 23—290.

The acknowledgment of the debt by one partner, made after the dissolution of the firm, will prevent the operation of the statute of limitations on a claim against the partnership.—*McEntire v. Oliver*, 9—209.

To support a new promise, in order to take a case out of the operation of the statute of limitations, there must be some benefit accruing to the party promising or some loss or inconvenience sustained by the party to whom the promise is made.—*Findlay v. Ray*, 50—125.

A new promise, made to a previous holder of a note, can not avail a subsequent holder to repel the statute of limitations.—*Thompson v. Gilbreath*, 48—493.

A new entry of a part payment on a note without other evidence tending to show that such entry was made at a time when it was against the interest of the holders to make such entry, is not of itself sufficient to repel the statutory presumption of payment.—*Woodhouse v. Simmons*, 73—30.

A defendant will not be permitted to plead the statute of limitations when the plaintiff delayed the bringing of his action on account of the conduct of defendant expressing or implying a promise not to plead it.—*Barcroft v. Roberts*, 91—369.

The acknowledgment, which will take a case out of the operation of the statute of limitations, must be that of a present, subsisting obligation.—*Bank of New Bern v. Snead*, 10—500.

To take a debt out of the operation of the statute of limitations, the promise to pay or acknowledgment of the debt must be made to the creditor himself.—*Parker v. Shuford*, 76—219.

The acceptance, by a judgment creditor, of a promissory note upon a third person, in satisfaction of the judgment, is a discharge of the same, although the note is for a less amount than the judgment.—*Currie v. Kennedy*, 78—91.

When one surety on a note makes a payment after the note is barred by the statute of limitations, it does not revive the debt as to the co-sureties.—*Long v. Miller*, 93—227.

Where the presumption of the payment of a bond, signed by two obligors, has arisen, the declaration of one of the obligors is not sufficient to rebut the presumption as to the other.—*Rogers v. Clements*, 92—81.

The act declaring that the statute of limitations shall not run against any debt owing by the holder of a homestead which is affected by the act forbidding the sale of reversions, has been repealed, and the statute now runs on such debts from 1st November, 1883.—*Cobb v. Hallyburton*, 92—652.

The statute of limitations bars the liability of a surety to a sealed note in three years.—*Welfare v. Thompson*, 83—276.

Payment of interest on a note by the principal, before it is barred by the statute of limitations, arrests the operation of the statute of limitations as to all the makers.—*Green v. College*, 83—449.

A new promise made by the debtor after the note is barred by the statute of limitations has the effect to revive the debt, but to make such new promise effectual, if made since August, 1868, it must be in writing.—*Riggs v. Roberts*, 85—151.

If a note is payable on demand the statute of limitations runs from the day of its date, without demand.—*Little v. Dunlap*, 45—40.

Where one of two sureties has paid the amount of a note, the statute of limitations commences to run against him, in favor of his co-surety, from the time of such payment.—*Sherrod v. Woodard*, 15—360.

Where there is a running account all on one side, the statute of limitations runs on each item from its date. Where there are mutual accounts, the statute runs only from the last dealing between the parties.—*Robertson v. Pickrell*, 77—302; *Stokes v. Taylor*, 104—394.

A party will not be allowed to plead statute of limitations where delay in bringing suit was due to the promise of himself or his attorney that the matter would be settled and no advantage taken of the lapse of time.—*Barcroft v. Roberts*, 92—363.

861. Admission by partner after dissolution; effect.—No act, admission or acknowledgment by any partner after the dissolution of the copartnership, or by any of the makers of a promissory note or bond after the statute of limitation shall have barred the same, shall be received as evidence to repel the statute, except against the partner or maker of the promissory note or bond, doing the act or making the admission or acknowledgment.—Rev., 372.

862. Undisclosed partner.—The statutes of limitations prescribed by law shall apply to a civil action brought against an undisclosed partner only from the time when such partnership became known to the plaintiff.—Rev., 373.

863. Co-tenants; part barred, when.—If in actions by tenants in common or joint tenants of personal property, to recover the same, or damages for the detention of, or injury thereto, any of them shall be barred of their recovery by limitation of time, the rights of the others shall not be affected thereby, but they may recover according to their right and interest, notwithstanding such bar.—Rev., 374.

864. Applicable to actions by state.—The limitations prescribed by law shall apply to civil actions brought in the name of the state, or for its benefit, in the same manner as to actions by or for the benefit of private parties.—Rev., 375.

865. Actions on account current.—In an action brought to recover a balance due upon a mutual, open and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the latest item proved in the account, on either side.—Rev., 376.

866. Not applicable to bank bills.—The limitations prescribed by law shall not affect actions to enforce the payment of bills, notes or other evidences of debt, issued or put in circulation as money by moneyed corporations under the laws of the state.—Rev., 377.

867. Actions against bank officers and stockholders.—The limitations prescribed by law shall not affect actions against directors or stockholders of any moneyed corporation, or banking association incorporated under the laws of this state, to recover a penalty or forfeiture imposed, or to enforce a liability created by law; but such actions must be brought within three years after the discovery by the aggrieved party of the facts upon which the penalty or forfeiture attached, or the liability was created.—Rev., 378.

868. Aliens in time of war.—When a person shall be an alien subject, or a citizen of a country at war with the United States, the time of the continuance of the war shall not be part of the period limited for the commencement of the action.—Rev., 379.

CHAPTER IV.

LIMITATIONS, REAL PROPERTY.

869. Title against state.—The state will not sue any person for, or in respect of, any real property, or the issues or profits thereof, by reason of the right or title of the state to the same:

(1) When the person in possession thereof, or those under whom he claims, shall have been in the adverse possession thereof for thirty years, such possession having been ascertained and identified under known and visible lines or boundaries, which shall give a title in fee to the possessor.

870. (2) When the person in possession thereof, or those under whom he claims, shall have been in possession under colorable title for twenty-one years, such possession having been ascertained and identified under known and visible lines or boundaries.—Rev., 380.

871. Such possession valid against claimants under the state.—All such possession as is described in the preceding section, under such title as is therein described, is hereby ratified and confirmed, and declared to be a good and legal bar against the entry or suit of any person, under the right or claim of the state.—Rev., 381.

872. Seven years possession under color.—When the person in possession of any real property, or those under whom he claims, shall have been possessed of the same, under known and visible lines and boundaries, and under colorable title, for seven years, no entry shall be made or action sustained against such possessor, by any person having any right or title to the same, except during the seven years next after his right or title shall have descended or accrued, who in default of suing within the time aforesaid, shall be excluded from any claim thereafter to be made; and such possession, so held, shall be a perpetual bar against all persons not under disability.—Rev., 382.

873. Seizure within twenty years when necessary.—No action for the recovery of real property, or the possession thereof, shall be maintained, unless it appear that the plaintiff, or those under whom he claims, was seized or possessed of the premises in question within twenty years before the commencement of such action, unless he was under the disabilities prescribed by law.—Rev., 383.

874. Twenty years adverse possession.—No action for the recovery of real property, or the possession thereof, or the issues and profits thereof, shall be maintained when the person in possession thereof, or the defendant in such action, or those under whom he claims, shall have possessed such real property under known and visible lines and boundaries adversely to all other persons for twenty years; and such possession so held shall give a title in fee to the possessor in such property, against all persons not under disability.—Rev., 384.

875. Action after entry.—No entry upon real estate shall be deemed sufficient or valid, as a claim, unless an action be commenced thereupon within one year after the making of such entry, and within the time prescribed in this chapter.—Rev., 385.

876. Possession follows legal title, when.—In every action for the recovery of real property, or the possession thereof, or damages for a trespass on such possession, the person establishing a legal title to the premises shall be presumed to have been possessed thereof within the time required by law; and the occupation of such premises by any other person shall be deemed to have been under, and in subordination to, the legal title, unless it appears that such premises have been held and possessed adversely to such legal title for the time prescribed by law before the commencement of such action.—Rev., 386.

877. Tenant's possession is landlord's.—Whenever the relation of landlord and tenant shall have existed between any persons, the possession of the tenant shall be deemed the possession of the landlord, until the expiration of twenty years from the termination of the tenancy; or where there has been no written lease, until the expiration of twenty years from the time of the last payment of rent, notwithstanding that such tenant may have acquired another title, or may have claimed to hold adversely to his landlord. But such presumptions shall not be made after the periods herein limited.—Rev., 387.

878. No title by possession of right-of-way.—No railroad, plank road, turnpike or canal company shall be barred of, or presumed to have conveyed, any real estate, right-of-way, easement, leasehold, or other

interest in the soil which may have been condemned, or otherwise obtained for its use as a right-of-way, depot, station house or place of landing, by any statute of limitation or by occupation of the same by any person whatever.—Rev., 388.

879. No title by possession of streets and highways.—No person or corporation shall ever acquire any exclusive right to any part of any public road, street, lane, alley, square, or public way of any kind by reason of any occupancy thereof, or by encroaching upon or obstructing the same in any way, and in all actions, whether civil or criminal, against any person or corporation on account of any encroachment upon or obstruction of, or occupancy of, any public way, it shall not be competent for any court to hold that such action is barred by any statute of limitations.—Rev., 389.

CHAPTER V.

LIMITATIONS, OTHER THAN REAL PROPERTY.

880. Periods prescribed.—The periods prescribed for the commencement of actions, other than for the recovery of real property, shall be as set forth in this subchapter.—Rev., 390.

881. Ten years.—Within ten years—

(1) An action upon a judgment or decree of any court of this state, or of the United States, or of any state or territory thereof, from the date of the rendition of said judgment or decree. But no such action shall be brought more than once, nor have the effect to continue the lien of the original judgment;

(2) An action upon a sealed instrument against the principal thereto;

(3) An action for the foreclosure of a mortgage or deed in trust for creditors with a power of sale, of real property, where the mortgagor or grantor has been in possession of the property, within ten years after the forfeiture of the mortgage, or after the power of sale became absolute, or within ten years after the last payment on the same;

(4) An action for the redemption of a mortgage, where the mortgagee has been in possession, or for a residuary interest under a deed in trust for creditors, where the trustee or those holding under him shall have been in possession; within ten years after the right of action accrued.—Rev., 391.

Note.—For time within which power of sale in mortgage may be executed, see Conveyances, s. 1044 of the Revisal.

Running of statute against judgment suspended by laying off homestead of judgment debtor, see s. 685 of the Revisal.

Although an action on a justice's judgment is barred by the lapse of seven years, yet the lien of such judgment continues ten years when docketed in the superior court, and execution may be issued thereon.—Boyles v. Young, 81—315; Cannon v. Parker, 81—320; Daniel v. Laughlin, 87—433.

882. Seven years.—Within seven years—

(1) An action on a judgment rendered by a justice of the peace, from the date thereof;

(2) By any creditor of a deceased person against his personal or real representative, within seven years next after the qualification of the executor or administrator and his making the advertisement required by law, for creditors of the deceased to present their claims, where no personal service of such notice in writing is made upon the creditor; and a creditor thus barred of a recovery against the representative of any principal debtor shall also be barred of a recovery against any surety to such debt.—Rev., 392.

883. Six years.—Within six years—

(1) An action upon the official bond of any public officer;
 (2) An action against any executor, administrator, collector, or guardian on his official bond, within six years after the auditing of his final accounts by the proper officer, and the filing of such audited account as required by law;

(3) An action for injury to any incorporeal hereditament.—Rev., 393.

Note.—For limitations against officers of a corporation, improper payment of dividends, etc., see Corporations.

884. Five years.—Within five years—

(1) No suit, action or proceeding shall be brought or maintained against any railroad company, owning or operating a railroad, for damages or compensation for right-of-way or use and occupancy of any lands by said company for use of its railroad, unless such suit, action or proceeding shall be commenced within five years after said lands shall have been entered upon for the purpose of constructing said road, or within two years after said road shall be in operation;

(2) No suit, action or proceeding shall be brought or maintained against any railroad company by any person for damages caused by the construction of said road, or the repairs thereto, unless such suit, action or proceeding shall be commenced within five years after the cause of action accrues, and the jury shall assess the entire amount of damages which the party aggrieved is entitled to recover by reason of the trespass on his property.—Rev., 394.

885. Three years.—Within three years—

(1) An action upon a contract, obligation or liability arising out of a contract, express or implied, except those mentioned in the preceding sections;

(2) An action upon a liability created by statute, other than a penalty or forfeiture, unless some other time be mentioned in the statute creating it;

(3) An action for trespass upon real property. When the trespass is a continuing one, such action shall be commenced within three years from the original trespass and not thereafter;

(4) An action for taking, detaining, converting or injuring any goods or chattels, including action for their specific recovery;

(5) An action for criminal conversation, or for any other injury to the person or rights of another, not arising on contract and not hereinafter enumerated;

(6) An action against the sureties of any executor, administrator, collector or guardian, on the official bond of their principal; within three years after the breach thereof complained of;

(7) An action against bail; within three years after judgment against the principal, but bail may discharge himself by a surrender of the principal at any time before final judgment against the bail;

(8) Fees due to any clerk, sheriff, or other officer, by the judgment of a court; within three years from the time of the judgment rendered, or of the issuing of the last execution therefor;

(9) An action for relief, on the ground of fraud or mistake; the cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting such fraud or mistake.

(10) An action for the recovery of real property sold for the non-payment of taxes, within three years after the execution of the sheriff's deed.—Rev., 395.

Note.—For actions against bank officers, see s. 378 of the Revisal; in bastardy, see Bastardy, s. 260 of the Revisal; for action for recovery of land sold for taxes, see s. 2912 of the Revisal.

886. Two years.—Within two years—

(1) All claims against the several counties, cities and towns of this state, whether by bond or otherwise, shall be presented to the chairman

of the board of county commissioners or to the chief officers of said cities and towns, as the case may be, within two years after the maturity of such claims, or the holders of such claims shall be forever barred from a recovery thereof.

(2) An action to recover the penalty for usury.—Rev., 396.

Note.—For statute giving personal representatives two years within which to settle, see ss. 144 and 155 of the Revisal; for statute regulating conveyances by heir or devisee within two years, see s. 70 of the Revisal; for right-of-way of railroad, see ante Five Years (1); for action on apprentice's bond, see s. 199 of the Revisal; for suit for redemption of land sold for taxes, see s. 2913 of the Revisal.

887. One Year.—Within one year—

(1) An action against a sheriff, coroner or constable, or other public officer, for a trespass under color of his office;

(2) An action upon a statute, for a penalty or forfeiture, where the action is given to the state alone, or in whole or in part, to the party grieved, or to a common informer, except where the statute imposing it prescribes a different limitation;

(3) An action for libel, assault, battery or false imprisonment;

(4) An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process.;

(5) An application for a widow's year's provision.—Rev., 397.

Note.—For time within which personal representative may bring action for wrongful death, see s. 59 of the Revisal; for minimum limit in contract of insurance, within which to bring suit, see Insurance, s. 4755 of the Revisal; for limit of time for creditors to present claims to personal representative and effect, see s. 94 of the Revisal.

888. Six months.—Within six months—

An action for slander.—Rev., 398.

Note.—Claim against decedent disputed by personal representative, barred in six months, see s. 93 of the Revisal.

889. All other actions, ten years.—An action for relief not herein provided for must be commenced within ten years after the cause of action shall have accrued.—Rev., 399.

Note.—Actions to try title to office, ninety days after induction into office, see s. 834 of the Revisal.

CHAPTER VI.

PARTIES.

890. Real party in interest; actions by assignees.—Every action must be prosecuted in the name of the real party in interest, except as otherwise provided; but this section shall not be deemed to authorize the assignment of a thing in action not arising out of contract. But an action may be maintained by a grantee of real estate in his own name, whenever he or any grantor or other person through whom he may derive title, might maintain such action, notwithstanding the grant of such grantor or other conveyance be void, by reason of the actual possession of a person claiming under a title adverse to that of such grantor, or other person, at the time of the delivery of such grant or other conveyance. In the case of an assignment of a thing in action, the action by the assignee shall be without prejudice to any set-off or other defense, existing at the time of, or before notice of, the assignment; but this section shall not apply to a negotiable promissory note or bill of exchange, transferred in good faith, and upon good consideration, before due.—Rev., 400.

891. Who may sue for penalties.—Where a penalty may be imposed by any law passed or hereafter to be passed, and it shall not be provided to what person the penalty is given, it may be recovered by any one who will sue for the same, and for his own use.—Rev., 401.

892. Suits for penalties brought in name of state.—Whenever any penalty shall be given by statute, and it is not prescribed in whose name suit therefor may be commenced, the same shall be brought in the name of the state.—Rev., 402.

893. Action by purchaser under judicial sale.—Any person let into possession under any judicial sale confirmed, where the title may be retained as a security for the price, shall be deemed the legal owner of the premises for all purposes of bringing suits for injuries thereto, after the day of sale, by trespass or wrongful possession taken or continued, in the same manner as if the title had been conveyed to him on day of sale, unless restrained by some order of the court directing the sale; and the suit so brought shall be under the control of the court ordering the sale.—Rev., 403.

894. Action by executor, trustee, etc.—An executor or administrator, a trustee of an express trust, or a person expressly authorized by statute, may sue without joining with him the person for whose benefit the action is prosecuted. A trustee of an express trust, within the meaning of this section, shall be construed to include a person with whom, or in whose name, a contract is made for the benefit of another.—Rev., 404.

895. Infants, etc., sue by guardian or next friend.—In actions and special proceedings whenever any of the parties plaintiff are infants, idiots, lunatics, or persons non compos mentis, whether said infants, idiots, lunatics, or persons non compos mentis be residents or non-residents of this state; said infants, idiots, lunatics or persons non compos mentis shall appear by their general or testamentary guardian, if they have any within the state; but if the action or proceeding be against such guardian, or if there be no such guardian, then said infants, lunatics or persons non compos mentis may appear by their next friend: Provided, however, that the duty of the state solicitors to prosecute in the case specified in chapter entitled "Guardian" shall not be affected by the provisions of this section.—Rev., 405.

896. Infants, etc., defend by guardian ad litem.—In all actions and special proceedings whenever any of the defendants are infants, idiots, lunatics, or persons non compos mentis, said infants, idiots, lunatics, or persons non compos mentis, shall defend by their general or testamentary guardian, if they have any within this state, whether said infants, idiots, lunatics, or persons non compos mentis, are residents or non-residents of this state; and if said idiots, lunatics, or persons non compos mentis, have no general or testamentary guardian within this state, and any of the defendants in said action or special proceeding shall have been summoned, then it shall be lawful for the court, wherein said action or special proceeding is pending, upon motion of any of the parties to the said action or special proceeding, to appoint some discreet person to act as guardian ad litem, to defend in behalf of such infants, idiots, lunatics, or persons non compos mentis; and such guardian so appointed shall, if the cause in which he is appointed be a civil action, file his answer to the complaint within the time required for other defendants, unless such time be extended by the court for good cause, and if the cause in which he is so appointed be a special proceeding, a copy of the complaint, with the summons, shall be served on said guardian ad litem, and after twenty days notice of said summons and complaint in such special proceeding, and after answer filed as above prescribed in such civil action, the court may proceed in the cause to final judgment, and decree therein in the same manner as if there had been personal service upon the said infant, idiot, lunatic, or person non compos mentis, defendants, and any decree or judgment in the case shall conclude the infant, idiot, lunatic, or person non compos mentis, defendants, as effectually as if he or they had been personally summoned.—Rev., 406.

897. Guardian ad litem to file answer.—Whenever any guardian ad litem shall be appointed, he shall file an answer in said action or special proceeding, admitting or denying the allegations thereof; the costs and expenses of which said answer, in all applications to sell or divide the real estate of said infants, shall be paid out of the proceeds of the property, or in case of a division, shall be charged upon the land, if the sale or division shall be ordered by the court, and if not ordered in any other manner the court shall direct.—Rev., 407.

898. Married woman.—When a married woman is a party, her husband must be joined with her except that,

(1) When the action concerns her separate property, she may sue alone;

(2) When the action is between herself and her husband, she may sue or be sued alone;

And in no case need she prosecute or defend by a guardian or next friend.—Rev., 408.

899. Who may be plaintiffs.—All persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs except as otherwise provided.—Rev., 409.

900. Who may be defendants.—Any person may be made a defendant who has, or claims, an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the questions involved therein; and in an action to recover the possession of real estate, the landlord and tenant thereof may be joined as defendants; and any person claiming title or right of possession to real estate may be made party plaintiff or defendant, as the case may require, to any such action.—Rev., 410.

901. Several parties, how classed; action by one for a class.—Of the parties to the action, those who are united in interest must be joined as plaintiffs or defendants; but if the consent of any one who should have been joined as plaintiff can not be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or general interest of many persons, or where the parties may be very numerous, and it may be impracticable to bring them all before the court, one or more may sue or defend for the benefit of the whole.—Rev., 411.

902. Persons severally liable, suit against.—Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, may all or any of them be included in the same action at the option of the plaintiff.—Rev., 412.

903. Persons jointly liable, suits against.—In all cases of joint contracts of co-partners in trade or others, suit may be brought and prosecuted on the same against all, or any number of the persons making such contracts.—Rev., 413.

904. New parties by order of court; interpleader.—The court either between the terms, or at a regular term, according to the nature of the controversy, may determine any controversy before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy can not be had without the presence of other parties, the court must cause them to be brought in. And when in an action for the recovery of real or personal property, a person not a party to the action, but having an interest in the subject-matter thereof, makes application to the court to be made a party, it may order him to be brought in by the proper amendment. A defendant against whom an action is pending upon a contract or for specific real or personal property, upon proof by affidavit that a person not a party to the action makes a demand against him for the same debt or property without collusion with him, may at

any time before answer, apply to the court, upon notice to that person and the adverse party, for an order to substitute that person in his place, and discharge him from liability to either, on his paying into court the amount of the debt, or delivering the possession of the property or its value to such person as the court shall direct. The court, in its discretion may make such an order.—Rev., 414.

905. Abatement of action.—(1) No action shall abate by the death, marriage, or other disability of a party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of death, except in suits for penalties, and for damages merely vindictive, marriage or other disability of a party, the court, on motion at any time within one year thereafter, or afterwards on a supplemental complaint, may allow the action to be continued, by, or against, his representative or successor in interest. In case of any other transfer of interest, the action shall be continued in the name of the original party, or the court may allow the person to whom the transfer is made, to be substituted in the action.

(2) After a verdict shall be rendered in any action for a wrong, such action shall not abate by the death of a party.

(3) At any time after the death, marriage, or other disability of the party plaintiff, the court in which an action is pending, upon notice to such persons as it may direct, and upon application of any person aggrieved, may, in its discretion, order that the action be deemed abated, unless the same be continued by the proper parties, within a time to be fixed by the court, not less than six months, nor exceeding one year from the granting of the order.

(4) No action against a receiver of a corporation shall abate by reason of his death, but, upon suggestion of the facts on the record, shall be continued against his successor, or against the corporation in case no new receiver be appointed.—Rev., 415.

906. Death of party suggested before clerk.—Whenever any party to any action in the superior court shall die pending the action, the death of such party may be suggested before the clerk of the superior court where the action is pending during vacation.—Rev., 416.

907. Clerk to summon party succeeding to rights or liabilities; answer.—When the suggestion of the death of a party has been made before any clerk, it shall be the duty of such clerk to issue a summons to the party who succeeds to the rights or liabilities of the defendant commanding him to appear before him on a day to be named in said summons, which shall be at least twenty days after the service thereof, and answer the complaint, and the issue joined by the filing of the said answer shall stand for trial at the term of the superior court next following.—Rev., 417.

908. Clerk to notify party succeeding to rights of deceased plaintiff.—When the plaintiff shall die and the suggestion of the death of a party is made, it shall be the duty of the clerk before whom the suggestion is made to issue a notice to the party succeeding to the rights of party deceased who will be necessary to the prosecution of the action to final judgment to appear and become party plaintiff, and in the event the party made plaintiff shall file an amended complaint, then the defendant shall have twenty days after notice of the amended complaint being filed in which to file an answer thereto, and the issue thus made up shall stand for trial at the succeeding term.—Rev., 418.

Note.—For substitution of administrator d. b. n., see s. 154 of the Revisal.

CHAPTER VII.

VENUE.

909. Place of subject of action.—Actions for the following causes must be tried in the county in which the subject of the action, or some part thereof, is situated, subject to the power of the court to change the place of trial, in the cases provided by law:

(1) For the recovery of real property, or of an estate or interest therein, or for the determination in any form of such right or interest, and for injuries to real property;

(2) For the partition of real property;

(3) For the foreclosure of a mortgage of real property;

(4) For the recovery of personal property.—Rev., 419.

910. Where causes of action arose.—Actions for the following causes must be tried in the county where the cause, or some part thereof, arose, subject to the like power of the court to change the place of trial, in the cases provided by law:

(1) For the recovery of a penalty or forfeiture, imposed by statute; except that, when it is imposed for an offence committed on a sound, bay, river, or other body of water, situated in two or more counties, the action may be brought in any county bordering on such sound, bay, river, or other body of water, and opposite to the place where the offense was committed;

(2) Against a public officer or person especially appointed to execute his duties, for an act done by him by virtue of his office; or against a person who by his command or in his aid, shall do anything touching the duties of such officer.—Rev., 420.

911. Official bonds, executors and administrators.—All actions upon official bonds or against executors and administrators in their official capacity shall be instituted in the county where the bonds shall have been given, if the principal or any of the sureties on the bond is in the county; if not, then in the plaintiff's county.—Rev., 421.

912. Domestic corporations.—For the purpose of suing and being sued the principal place of business of a domestic corporation shall be its residence.—Rev., 422.

913. Foreign corporations; where and by whom brought.—An action against a corporation created by or under the laws of any other state government, or country, may be brought in the superior court of any county in which the cause of action arose, or in which it usually did business, or in which it has property, or in which the plaintiffs, or either of them, shall reside, in the following cases:

(1) By a resident of this State, for any cause of action; or by a non-resident of this state in any county where he or they are regularly engaged in carrying on business;

(2) By a plaintiff, not a resident of this State, when the cause of action shall have arisen, or the subject of the action shall be situated within this State.—Rev., 423; Laws 1907, c. 460.

914. Where plaintiff or defendant resides; where neither is resident.—In all other cases the action shall be tried in the county in which the plaintiffs or the defendants, or any of them, shall reside at the commencement of the action; or if none of the defendants shall reside in the state, then in the county in which the plaintiffs, or any of them, shall reside; and if none of the parties shall reside within the state, then the same may be tried in any county which the plaintiff shall designate in his summons and complaint, subject, however, to the power of the court to change the place of trial, in the cases provided by statute: Provided, that in all actions against railroads the action shall be tried either in the county where the cause of action arose or

in the county where the plaintiff resided at the time the cause of action arose, or in some county adjoining the county in which the cause of action arose, subject, however, to the power of the court to change the place of trial in the cases provided by statute.—Rev., 424.

915. Change of.—If the county designated for that purpose, in the summons and complaint, be not the proper county, the action may, notwithstanding, be tried therein, unless the defendant before the time of answering expires, demand in writing that the trial be had in the proper county, and the place of trial be thereupon changed by consent of parties, or by order of the court.

The court may change the place of trial in the following cases:

(1) When the county designated for that purpose is not the proper county.

(2) When the convenience of witnesses and the ends of justice would be promoted by the change.

(3) When the judge shall have been, at any time, interested as party or counsel.—Rev., 425.

916. Removal for fair trial.—In all civil and criminal actions in the superior and criminal courts, in which it shall be suggested on oath, or by affirmation, on behalf of the State, or the traverser of the bill of indictment, or of the plaintiff or defendant, that there are probable grounds to believe that a fair and impartial trial can not be obtained in the county in which the action shall be pending, the judge shall be authorized to order a copy of the record of said action to be removed to some adjacent county for trial, if he shall be of the opinion that a fair trial can not be had in said county, after hearing all the testimony which may be offered on either side by affidavits.—Rev., 426.

917. Affidavits and counter affidavits; shall remove, when.—No action, whether civil or criminal, shall be so removed, unless the affidavit shall set forth particularly and in detail the ground of the application. And it shall be competent for the other side to controvert the allegations of fact in said application, and to offer counter affidavits to that end. And the judge shall order the removal of any such action, if he shall be satisfied after thorough examination of the evidence as aforesaid, that the ends of justice demand it.—Rev., 427.

918. Transcript on removal; subsequent proceedings.—When a cause shall be directed to be removed, the clerk shall transmit to the court to which the same is removed a transcript of the record of the case, with the prosecution bond, bail bond, and the depositions, and all other written evidences filed therein; and all other proceedings shall be had in the county to which the place of trial is changed, unless otherwise provided by the consent of the parties in writing duly filed, or by order of court.—Rev., 428.

CHAPTER VIII.

SUMMONS.

919. Civil actions commenced by.—Civil actions shall be commenced by issuing a summons; but no summons need issue in controversies submitted without action, and in confessions of judgment without action.—Rev., 429.

Note.—See ss. 580 and 803 of the Revisal, and *Hervey v. Edmunds*, 68 N. C., 243.

920. What to contain; where returnable.—The summons shall run in the name of the state, be signed by the clerk of the superior court having jurisdiction to try the action, and shall be directed to the sheriff or other proper officer of the county in which any defendant resides or

may be found. It shall be returnable to the regular term of the superior court of the county from which it issued; and shall command the sheriff, or other proper officer, to summon the defendant to appear at the next ensuing term of the superior court and answer the complaint of the plaintiff; and shall contain a notice stating in substance that if the defendant shall fail to answer the complaint within the time specified, the plaintiff will apply to the court for the relief demanded in the complaint; and shall be dated on the day of its issue.—Rev., 430.

Note.—See s. 106 of the Revisal.

921. When attested by seal.—Every summons addressed to the sheriff or other officer of any county, other than that from which it issued, shall be attested by the seal of the court; but when it shall be addressed to the sheriff or other officer of the county in which it issued, it shall not be attested by the seal of the court.—Rev., 431.

922. Issued to several counties.—The plaintiff may issue a summons, directed to the sheriff of any county where a defendant is most likely to be found, noting on each summons that it is issued in the same action; and when the said summons is returned, it shall be docketed as if only one had issue; and if any defendant shall not be served with such process, the same proceeding shall be had as in other cases of similar process not executed.—Rev., 432.

923. When officer shall execute and return.—The officer to whom the summons is addressed shall note on it the day of its delivery to him, and shall execute it at least ten days before the beginning of the term to which it shall be returnable, and shall return it by the first day of the term.—Rev., 433.

924. When issued within ten days of term.—If any summons shall be issued within less than ten days of the beginning of the next term of the superior court for the county in which it is issued, it shall be made returnable to the second term of said court next after the date of its issuing, and shall be executed and returned by the proper officer accordingly.—Rev., 434.

925. Issued more than, served within, ten days of term.—When the summons shall be issued more than ten days before the next succeeding term of the superior court of the county to which it is returnable, and shall be executed by the proper officer within less than ten days of said term, it shall be returned as if executed in proper time, and the case placed on the summons docket and continued to the next succeeding term, at which term it shall be treated in all respects as if said next succeeding term had been the return term thereof. But the parties to the action may, by agreement, make up the pleadings at the term to which the summons is returnable. Nothing herein contained shall be construed to release or discharge the sheriff or other officer from any liability he may incur by failing to execute the summons in due time.—Rev., 435.

926. When summons returned to second term.—Whenever it shall be necessary to serve summons, warrant of attachment, or other process by publication, and it shall appear that in order to make publication for the number of weeks required by law sufficient time will not elapse between the order of publication and the term of court next succeeding the order, then, in all such cases, it shall not be necessary to make the summons, warrant of attachment, or other process returnable to the term of court next succeeding, but it shall be lawful for the judge or clerk to direct that the summons, warrant of attachment, or other process shall be returnable to such other term of court, thereafter to be held, as will allow the summons, warrant of attachment, or other process to be published for the number of weeks required by law so that the publication may be completed before the term of court to which

such summons, warrant of attachment, or other process shall be returnable.—Rev., 436.

927. Alias and pluries.—When the defendant in a civil action or special proceeding is not served with summons within the time within which the summons is returnable, the plaintiff may sue out an alias or pluries summons, returnable in the same manner as original process.—Rev., 437.

928. Discontinuance.—A failure to keep up the chain of summonses issued against a party, but not served, by means of an alias or pluries summons, is a discontinuance as to such party; and if a summons is served after a break in the chain, it is a new action as to such party, begun when such summons was issued.—Rev., 438.

See *Koonce v. Pelletier*, 115 N. C. R., 233.

929. Served by reading.—The summons shall be served in all cases, except as hereinafter provided, by the sheriff or other officer reading the same to the party or parties named as defendant, and such reading shall be a legal and sufficient service.—Rev., 439.

Note.—For statute forbidding service on Sunday, see s.

930. Served by copy; corporations; infants; persons non compos.—The summons shall be served by delivering a copy thereof in the following cases:

(1) If the action be against a corporation, to the president or other head of the corporation, secretary, cashier, director, managing or local agent thereof: Provided, that any person receiving or collecting moneys within this state for, or on behalf of, any corporation of this or any other state or government, shall be deemed a local agent for the purpose of this section; but such service can be made in respect to a foreign corporation only when it has property within this state, or the cause of action arose therein, or when the plaintiff resides in the state, or when such service can be made within the state, personally upon the president, treasurer or secretary thereof.

(2) If against a minor under the age of fourteen years, to such minor personally, and also to his father, mother or guardian, or if there be none within the state, then to any person having the care and control of such minor, or with whom he shall reside, or in whose service he shall be employed.

(3) If against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs in consequence of habitual drunkenness, and for whom a committee or guardian has been appointed, to such committee and to the defendant personally: Provided, that the superintendent of an insane asylum, or the acting superintendent of such asylum, shall inform the sheriff or other officer who is charged with the duty of serving a summons or other judicial process, or notice, on any insane person confined in such asylum, that the summons, or process, or notice, can not be served without danger of injury to such insane person, it shall be sufficient for such officer to return said summons, process, or notice, without actual service on the insane person, but with an indorsement that it was not personally served because of such information, and when an insane person shall be confined in a common jail it shall be sufficient for an officer charged with service of a notice, summons, or other judicial process, to return the same with the endorsement that it was not served because of similar information as to the danger of service on such insane person given by the physician of the county in which said jail is situated.—Rev., 440.

931. Irregular service on infants, etc., validated.—In any and all civil actions, and special proceedings pending on the fourteenth day of March, one thousand eight hundred and seventy-nine, or theretofore

determined, in any of the courts, wherein any or all of the defendants were infants, idiots, lunatics or persons non compos mentis, on whom there was no personal service of the summons, the proceedings, actions, decrees and judgments taken, had and made by such courts in such civil actions and special proceedings shall be valid, effectual and binding against and upon such infants, idiots, lunatics, and persons non compos mentis, and their rights and estates in like manner, as if they had been personally served with a summons therein: Provided, that this section shall not have the effect, nor be construed, to prevent any proceedings, actions, judgments or decrees hereby rendered regular and confirmed, from being impeached and set aside for fraud.—Rev., 441.

932. Service by publication.—Where the person on whom the service of the summons is to be made can not, after due diligence, be found within the state, and that fact appears by affidavit to the satisfaction of the court, or to a judge thereof, and it also appears that a cause of action exists against the defendant in respect to whom service is to be made, or that he is a proper party to an action relating to real property in this state, such judge or court may grant an order that the service be made by publication of a notice in either of the following cases:

(1) Where the defendant is a foreign corporation, and has property within the state, or the cause of action arose therein.

(2) Where the defendant, being a resident of this state, has departed therefrom, with intent to defraud his creditors, or to avoid the service of a summons, or keep himself concealed therein.

(3) Where he is not a resident of this state, but has property therein, and the court has jurisdiction of the subject of the action.

(4) Where the subject of the action is real or personal property in this state, and the defendant has, or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partly in excluding the defendant from any lien or interest therein.

(5) Where the action is for a divorce, and in all cases where publication is made, the complaint must be filed before the expiration of the time of publication ordered.

(6) Where the stockholders of any corporation are deemed to be necessary parties to an action and their names or residences are unknown; or where the names or residences of parties interested in real estate the subject of an action are unknown, if the name of at least one of the parties to the action and interested in the subject matter thereof shall be known, and he be a resident of the state, the court having jurisdiction may, upon affidavit that after due diligence the names or residences of such parties can not be ascertained, authorize service by publication.

(7) Where in actions for the foreclosure of mortgages on real estate, if any party having any interest in, or lien upon, such mortgaged premises, is unknown to the plaintiff, and the residence of such party can not, with reasonable diligence, be ascertained by him, and such fact shall be made to appear by affidavit.

(8) Where no office or agent of a domestic corporation upon whom service can be made can, after due diligence, be found within the state, and such facts be made to appear by affidavit. This subsection shall also apply to all summonses, orders to show cause, orders and notices issued by any board of aldermen, board of town or county commissioners or by individuals.—Rev., 442.

933. Manner of publication.—The order must direct the publication in any one or two newspapers to be designated as most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, not less than once a week for four weeks, of a notice, giving the title of the action, the purpose of the same, and requiring the defendant to appear and answer, or demur to the complaint

at a time and place therein mentioned; and no publication of the summons, nor mailing of the summons and complaint, shall be deemed necessary. The cost of publishing in a newspaper shall not exceed one dollar and fifty cents an inch of solid type, and shall in no case exceed six dollars for the notice.—Rev., 443.

934. When service complete.—In the cases in which service by publication is allowed, the summons shall be deemed served at the expiration of the time prescribed by the order of publication, and the party shall then be in court.—Rev., 444.

935. Jurisdiction acquired from service.—From the time of service of the summons in a civil action, or the allowance of a provisional remedy, the court is deemed to have acquired jurisdiction, and to have control of all subsequent proceedings.—Rev., 445.

936. Proof of service.—Proof of the service of the summons or notice must be—

1. By the certificate of the sheriff or other proper officer.
2. In case of publication, the affidavit of the printer, or of his foreman or principal clerk, showing the same.
3. The written admission of the defendant.—Rev., 446.

937. Voluntary appearance by defendant.—A voluntary appearance of a defendant is equivalent to personal service of the summons upon him.—Rev., 447.

938. Personal service on nonresident.—When the place of residence is known and the same is made to appear by affidavit, in lieu of publication in a newspaper, it will be sufficient to mail a copy of the summons, notice or other process, accompanied by a statement as to the nature of the action or proceeding, to the sheriff or other process officer of the county and state where the defendant resides, who shall serve same according to its tenor. The process officer who serves the papers shall, in making his return, use a form of certificate substantially as follows:

State of....., County of.....

I,, clerk of the court of county, in the state of, which court is a court of record having a seal, which is hereto attached, do certify that, to me well known as the sheriff of said county of, who being by me duly sworn, says that as such sheriff he has full power to serve any and all legal processes issuing from the courts of said state, and that on the day of, 190..., he served the summons hereto attached by reading and delivering a copy of same to, the defendant therein named.

....., Sheriff,
.....County,
State of.....

Sworn to and subscribed before me, this day of....., 190..., Clerk Court,

County of.....
State of

[L. S.]

—Rev., 448.

939. Defense after judgment on substituted service.—The defendant against whom publication is ordered, or who is served under the provisions of the preceding section, or his representatives, on application and sufficient cause shown at any time before judgment, must be allowed to defend the action; and, except in an action for divorce, the defendant against whom publication is ordered, or his representatives, may in like manner, upon good cause shown, be allowed to defend after judgment, or at any time within one year after notice thereof, and within five years after its rendition, on such terms as may be

just; and if the defense be successful and the judgment or any part thereof shall have been collected or otherwise enforced, such restitution may thereupon be compelled as the court may direct; but title to property sold under such judgment to a purchaser in good faith shall not be thereby affected.—Rev., 449.

Note.—Summoned after judgment, see s. 946.

CHAPTER IX.

PROSECUTION BONDS.

940. Plaintiff's, for costs.—Before issuing summons the clerk shall require of the plaintiff, either to give an undertaking with sufficient surety in the sum of two hundred dollars, with the condition that the same shall be void if the plaintiff shall pay to the defendant all such costs as the defendant may recover of him in the action; or to deposit a like sum with him as a security to the defendant for such costs; and in case of such deposit he shall give to the plaintiff and to the defendant a certificate to that effect; or to file with him a written authority from some judge or clerk of a superior court, authorizing the plaintiff to sue as a pauper.—Rev., 450.

941. Suit as a pauper.—Any judge or clerk of the superior court may authorize any person to sue as a pauper in their respective courts, when he shall prove, by one or more witnesses that he has a good cause of action, and shall make affidavit that he is unable to comply with the last section.—Rev., 451.

942. Court may assign counsel.—The court to which such summons is made returnable may, at its discretion, assign to the person suing as a pauper, learned counsel, who shall prosecute his action.—Rev., 452.

943. Defendant's, for costs and damages in actions for land.—In all actions for the recovery of real property or for the possession thereof, the defendant, before he is permitted to plead, answer or demur, shall execute and file in the office of the clerk of the superior court of the county wherein the suit is pending an undertaking with good and sufficient surety, in an amount to be fixed by the court, not less than two hundred dollars, to be void upon condition that the defendant pay to the plaintiff all such costs and damages as the plaintiff may recover in the action, including damages for the loss of rents and profits.—Rev., 453.

944. Defense without good bond, when.—The undertaking prescribed in the preceding section shall not be required if an attorney practicing in the court wherein the action is pending will certify to the court in writing that he has examined the case of the defendant and is of the opinion that the plaintiff is not entitled to recover; and if the defendant will also file an affidavit stating that he is not worth the amount of said undertaking in any property whatsoever, and is unable to give the same.—Rev., 454.

CHAPTER X.

JOINT AND SEVERAL DEBTORS.

945. When some only of defendants are served; partners.—Where the action is against two or more defendants, and the summons is served on one or more of them, but not on all of them, the plaintiff may proceed as follows:

(1) If the action be against defendants jointly indebted upon con-

tract, he may proceed against the defendants served, unless the court otherwise direct, and if he recover judgment, it may be entered against all the defendants thus jointly indebted, so far only as that it may be enforced against the joint property of all, and the separate property of the defendants served, and if they are subject to arrest, against the persons of the defendants served; or,

(2) If the action be against defendants severally liable, he may proceed against the defendants served, in the same manner as if they were the only defendants;

(3) If all the defendants have been served, judgment may be taken against any or either of them severally, when the plaintiff would be entitled to judgment against such defendant or defendants if the action had been against them or any of them alone;

(4) If the name of one or more partners shall, for any cause, have been omitted in any action in which judgment shall have passed against the defendants named in the summons, and such omission shall not have been pleaded in such action, the plaintiff in case the judgment therein shall remain unsatisfied, may by action recover of such partner, separately, upon proving his joint liability, notwithstanding he may not have been named in the original action; but the plaintiff shall have satisfaction of only one judgment rendered for the same cause of action.—Rev., 455.

946. Summons after judgment; when.—When a judgment shall be recovered against one or more of several persons jointly indebted upon a contract by proceeding, as provided in the preceding section, those who were not originally summoned to answer the complaint may be summoned to show cause why they should not be bound by the judgment, in the same manner as if they had been originally summoned.—Rev., 456.

947. Defense by party summoned after judgment.—Any party so summoned may answer within the time specified denying the judgment, or setting up any defense thereto which may have arisen subsequently to such judgment; and may make any defense which he might have made to the action if the summons had been served on him at the time when the same was originally commenced, and such defense had been then interposed to such action.—Rev., 457.

948. Pleadings and proceedings same as in action.—The party issuing the summons may demur or reply to the answer, and the party summoned may demur to the reply; and the issues may be tried and judgment may be given in the same manner as in an action, and enforced by execution, if necessary.—Rev., 458.

949. Answer and reply to be verified as in action.—The answer and reply shall be verified in the like cases and manner and be subject to the same rules as the answer and reply in an action.—Rev., 459.

CHAPTER XI.

LIS PENDENS.

950. Notice of filed in county where land lies.—In an action affecting the title to real property, the plaintiff, at the time of filing the complaint or at any time afterwards or whenever a warrant of attachment shall be issued, or at any time afterwards, the plaintiff or a defendant when he sets up an affirmative cause of action in his answer and demands substantive relief at the time of filing his answer or at any time afterwards, if the same be intended to affect real estate, may

file with the clerk of each county in which the property is situated a notice of the pendency of the action, containing the names of the parties, the object of the action, and the description of the property in that county affected thereby; and if the action be for the foreclosure of a mortgage, such notice must be filed twenty days before judgment and must contain the date of the mortgage, the parties thereto, and the time and place of registering the same.—Rev., 460.

951. Notice ineffectual unless action is prosecuted.—The notice of *lis pendens* shall be of no avail unless it shall be followed by the first publication of notice of the summons or by an order therefor, or by the personal service on the defendant within sixty days after such filing.—Rev., 461.

952. Effect of, on subsequent purchasers.—From the filing of the notice of *lis pendens* only shall the pendency of the action be constructive notice to a purchaser or incumbrancer of the property affected thereby; and every person whose conveyance or incumbrance is subsequently executed or subsequently registered, shall be deemed a subsequent purchaser or incumbrancer, and shall be bound by all proceedings taken after the filing of such notice to the same extent as if he were made a party to the action. For the purposes of this section an action shall be deemed to be pending from the time of filing such notice.—Rev., 462.

953. Notice cancelled, when and how.—The court in which the said action was commenced may, in its discretion, at any time after the action shall be settled, discontinued or abated, on application of any person aggrieved, and on good cause shown, and on such notice as shall be directed or approved by the court, order the notice authorized by this subchapter to be cancelled of record, by the clerk of any county in whose office the same may have been filed or recorded; and such cancellation shall be made by an endorsement to that effect on the margin of the record, which shall refer to the order.—Rev., 463.

954. *Lis pendens* in Buncombe.—Any party to an action desiring to claim the benefit of a notice of *lis pendens* in Buncombe county, whether given formally under this section or in the pleadings filed in the case, shall cause such notice to be cross-indexed by the clerk of the superior court in a docket to be kept by him, to be called "Record of *Lis Pendens*," which index shall contain the names of the parties to the action, where such notice, whether formal or in the pleadings as filed, the object of the action, the date of indexing and a sufficient description of the land to be affected to enable any person to locate said lands. From the time of cross-indexing only shall the pendency of the action be actual or constructive notice to subsequent purchasers or incumbrancers. The word "filing" in the preceding sections of this subchapter when referring to actions or proceedings in Buncombe county shall read "cross-indexing." The clerk shall be entitled to a fee of twenty-five cents for indexing said notice, to be paid as are other costs in the pending action.—Rev., 464.

CHAPTER XII.

COMPLAINT.

955. The first pleading.—The first pleading on the part of the plaintiff is the complaint.—Rev., 465.

956. Time of filing.—The plaintiff shall file his complaint in the clerk's office on or before the third day of the term to which the action is brought, otherwise the suit may, on motion, be dismissed at the cost of the plaintiff.—Rev., 466.

957. Contents.—The complaint shall contain:

(1) The title of the cause, specifying the name of the court in which the action is brought, the name of the county in which the trial is required to be had, and the names of the parties to the action, plaintiff and defendant;

(2) A plain and concise statement of the facts constituting a cause of action, without unnecessary repetition; and each material allegation shall be distinctly numbered;

(3) A demand of the relief to which the plaintiff supposes himself entitled. If the recovery of money be demanded, the amount thereof must be stated.—Rev., 467.

958. In action to recover purchase money of land.—In actions for the recovery of a debt contracted for the purchase of land, it shall be the duty of the plaintiff to set forth in his complaint that the consideration of the debt sued on was the purchase-money of certain land, describing said land in an intelligible manner, such as the number of acres, how bounded, and where situated.—Rev., 468.

959. What causes of action may be joined.—The plaintiff may unite in the same complaint several causes of action, whether they be such as have been heretofore denominated legal, or equitable, or both, where they all arise out of:

(1) The same transaction; or transaction connected with the same subject of action.

(2) Contract, express or implied; or,

(3) Injuries with or without force to person and property, or to either; or,

(4) Injuries to character; or,

(5) Claims to recover real property, with or without damages for the withholding thereof; and the rents and profits of the same; or,

(6) Claims to recover personal property, with or without damages for the withholding thereof; or,

(7) Claims against a trustee, by virtue of a contract, or by operation of law.

But the causes of action so united must all belong to one of these classes, and except in actions for the foreclosure of mortgages, must affect all parties to the action, and not require different places of trial, and must be separately stated. In actions to foreclose mortgages, the court shall have power to direct and adjudge the payment by the mortgagor, of any residue of the mortgage debt that may remain unsatisfied after a sale of the mortgaged premises, in cases in which the mortgagor shall be personally liable for the debt secured by such mortgage; and if the mortgage debt be secured by the covenant or obligation of any person other than the mortgagor, the plaintiff may make such person a party to the action, and the court may adjudge payment of the residue of such debt remaining unsatisfied after a sale of the mortgaged premises, against such other person, and may enforce such judgment as in other cases.—Rev., 469.

CHAPTER XIII.

DEFENDANT'S PLEADINGS.

960. Demurrer or answer.—The only pleading on the part of the defendant is either a demurrer or an answer.—Rev., 470.

961. Demurrer and answer.—The defendant may demur to one or more of several causes of action stated in the complaint, and answer to the residue.—Rev., 471.

962. Sham and irrelevant defenses.—Sham and irrelevant answers and defenses may be stricken out on motion, and upon such terms as the court may in its discretion impose.—Rev., 472.

Note.—See s. 1047.

963. Time for.—The defendant shall appear and demur or answer at the same term to which the summons shall be returnable, otherwise the plaintiff may have judgment by default.—Rev., 473.

CHAPTER XIV.

DEMURRER.

964. Grounds for.—The defendant may demur to the complaint when it shall appear upon the face thereof, either—

- (1) That the court has no jurisdiction of the person of the defendant, or of the subject of the action; or,
- (2) That the plaintiff has not legal capacity to sue; or,
- (3) That there is another action pending between the same parties for the same cause; or,
- (4) That there is a defect of parties plaintiff or defendant; or,
- (5) That several causes of action have been improperly united; or,
- (6) That the complaint does not state facts sufficient to constitute a cause of action.—Rev., 474.

965. Must specify grounds of objection.—The demurrer shall distinctly specify the grounds of objection to the complaint. Unless it does so, it may be disregarded. It may be taken to the whole complaint, or to any of the alleged causes of action stated therein.—Rev., 475.

966. Sustained for misjoinder, action divided.—If the demurrer be allowed for the reason that several causes of action have been improperly united, the judge shall, upon such terms as may be just, order the action to be divided into as many actions as may be necessary to the proper determination of the causes of action therein mentioned.—Rev., 476.

967. Objection not appearing in complaint.—When any of the matters enumerated as grounds of demurrer do not appear on the face of the complaint, the objection may be taken by answer.—Rev., 477.

968. Objection waived.—If no such objection be taken either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting only the objection to the jurisdiction of the court, and the objection that the complaint does not state facts sufficient to constitute a cause of action.—Rev., 478.

CHAPTER XV.

ANSWER.

969. Contains what.—The answer of the defendant must contain—

- (1) A general or specific denial of each material allegation of the complaint controverted by the defendant, or of any knowledge or information thereof, sufficient to form a belief.
- (2) A statement of any new matter constituting a defense or counter-claim, in ordinary and concise language, without repetition.—Rev., 479.

970. Debt for purchase money of land denied.—If the defendant shall deny in his answer that the obligation sued on was for the purchase money of the land described in the complaint, it shall be the duty of the court to submit the issue so joined to the jury.—Rev., 480.

971. Counter-claim.—The counter-claim mentioned in section four hundred and seventy-nine must be one existing in favor of a defendant and against a plaintiff between whom a several judgment might be had in the action, and arising out of the following causes of action:

(1) A cause of action arising out of the contract or transaction set forth in the complaint as the foundation of the plaintiff's claim or connected with the subject of the action.

(2) In an action arising on contract, any other cause of action arising also on contract, and existing at the commencement of the action.—Rev., 481.

972. Several defenses.—The defendant may set forth by answer as many defenses and counter-claims as he may have, whether they be such as have been theretofore denominated legal, equitable, or both. They must each be separately stated and numbered, and refer to the cause of action which they are intended to answer in such manner that they may be intelligibly distinguished.—Rev., 482.

Note.—Statute of limitations pleaded by answer only, see s. 849.

973. Contributory negligence pleaded and proved.—In all actions to recover damages by reason of the negligence of the defendant, where contributory negligence is relied upon as a defense, it shall be set up in the answer and proved on the trial.—Rev., 483.

CHAPTER XVI.

REPLY.

974. When filed; cause at issue.—The plaintiff shall join issue on the demurrer or reply to the answer at the same term to which such demurrer or answer may be filed; and the issues, whether of law or of fact, shall stand for trial at the next term succeeding the term at which the pleadings are completed: Provided, that where an action is instituted upon a bill, note, bill of exchange, liquidated and settled account, or for divorce, and summons in such action shall be served on the defendant at least thirty days before the term of court to which such summons shall be returnable, and a copy of the complaint filed in the clerk's office at least thirty days before such term of court, if civil cases can be tried at such, then and in such case such action shall stand for trial at such first term of court.—Rev., 484.

975. What to contain; demurrer to answer.—When the answer contains new matter constituting a counter-claim, the plaintiff may reply to such new matter, denying generally or specifically each allegation controverted by him or any knowledge or information thereof sufficient to form a belief; and he may allege, in ordinary and concise language, without repetition, any new matter not inconsistent with the complaint, constituting a defense to such new matter in the answer; and the plaintiff may in all cases demur to an answer containing new matter, where, upon its face, it does not constitute a counter-claim or defense; and the plaintiff may demur to one or more of such defenses or counter-claims, and reply to the residue of the counter-claim. And in other cases, when an answer contains new matter constituting a defense by way of avoidance, the court may, in its discretion, on the defendant's motion, require a reply to such new matter;

and in that case, the reply shall be subject to the same rules as a reply to a counter-claim.—Rev., 485.

976. Demurrer to reply.—If a reply of the plaintiff to any defense set up by the answer of the defendant be insufficient, the defendant may demur thereto, and shall state the grounds thereof.—Rev., 486.

CHAPTER XVII.

PLEADING—GENERAL PROVISIONS.

977. Forms of.—The forms of pleading in civil actions in courts of record, and the rules by which the sufficiency of the pleadings is to be determined, are those prescribed by this chapter.—Rev., 487.

978. Subscribed; verified, when.—Every pleading in a court of record must be subscribed by the party or his attorney; and when any pleading is verified, every subsequent pleading, except a demurrer, must be verified also.—Rev., 488.

979. Verification.—The verification must be in substance that the same is true to the knowledge of the person making it, except as to those matters stated on information and belief, and as to those matters he believes it to be true; and must be by affidavit of the party, or if there be several parties united in interest, and pleading together, by one at least of such parties acquainted with the facts, if such party be within the county where the attorney resides, and capable of making the affidavit.—Rev., 489.

980. Verification by agent or attorney.—The affidavit may also be made by the agent or attorney, if the action or defense be founded upon a written instrument for the payment of money only, and such instrument be in the possession of the agent or attorney, or if all the material allegations of the pleading be within the personal knowledge of the agent or attorney. When the pleading is verified by any other person than the party, he shall set forth in the affidavit his knowledge, or the grounds of his belief on the subject, and the reasons why it is not made by the party.—Rev., 490.

981. Verification by corporation; when state is party.—When a corporation is a party the verification may be made by any officer, or managing or local agent thereof upon whom summons might be served; and when the state or any officer thereof in its behalf is a party, the verification may be made by any person acquainted with the facts.—Rev., 491.

982. Verification before what officer.—Any officer competent to take the acknowledgment of deeds, and any judge or clerk of the superior court, notary public, in or out of the state, or justice of the peace, shall be competent to take affidavits for the verification of pleadings, in any court or county in the state, and for general purposes.—Rev., 492.

983. Verification omitted, when; pleadings incompetent in criminal prosecutions.—The verification may be omitted when an admission of the truth of the allegation might subject the party to prosecution for felony. And no pleading can be used in a criminal prosecution against the party as proof of a fact admitted or alleged in such pleading.—Rev., 493.

984. Items of account; particulars to be furnished, when.—It shall not be necessary for a party to set forth in a pleading the items of an account therein alleged; but he shall deliver to the adverse party within ten days after a demand thereof in writing, a copy of the

account, which, if the pleading is verified, must be verified by his own oath, or that of his agent or attorney, if within the personal knowledge of such agent or attorney, to the effect that he believes it to be true, or be precluded from giving evidence thereof. The court or the judge thereof may order a further account when the one delivered is defective; and the court may, in all cases, order a bill of particulars, of the claim of either party to be furnished.—Rev., 494.

985. Pleadings construed.—In the construction of a pleading for the purpose of determining its effect, its allegations shall be liberally construed, with a view to substantial justice between the parties.—Rev., 495.

986. Irrelevant, redundant, indefinite, uncertain.—If irrelevant or redundant matter be inserted in a pleading, it may be stricken out, on motion of any person aggrieved thereby, but this motion must be made before answer or demurrer, or before an extension of time to plead is granted. And when the allegations of a pleading are so indefinite or uncertain that the precise nature of the charge or defense is not apparent, the court may require the pleading to be made definite and certain by amendment.—Rev., 496.

987. Judgments, burden of proof.—In pleading a judgment or other determination of a court or of an officer of special jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading shall be bound to establish, on the trial, the facts conferring jurisdiction.—Rev., 497.

988. Conditions precedent pleaded; burden of proof; instrument for payment of money pleaded.—In pleading the performance of conditions precedent in a contract, it shall not be necessary to state the facts showing such a performance; but it may be stated generally that the party duly performed all conditions on his part; and if such allegation be controverted, the party pleading shall be bound to establish, on the trial, the facts showing such performance. In an action or defense founded upon an instrument for the payment of money only, it shall be sufficient for the party pleading to give a copy of the instrument, and to state that there is due to him thereon, from the adverse party, a specified sum which he claims.—Rev., 498 and 499.

989. Private statutes, pleaded.—In pleading a private statute or right derived therefrom, it shall be sufficient to refer to such statute by its title and the day of its ratification, and the court shall thereupon take judicial notice thereof.—Rev., 500.

990. Libel and slander, complaint, onus.—In an action for libel or slander, it shall not be necessary to state in the complaint any extrinsic facts, for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose; but it shall be sufficient to state generally that the same was published or spoken concerning the plaintiff; and if such allegation be controverted, the plaintiff shall be bound to establish, on trial, that it was so published or spoken.—Rev., 501.

991. Libel and slander, answer.—In the actions mentioned in the preceding section, the defendant may, in his answer, allege both the truth of the matter charged as defamatory, and any mitigating circumstances to reduce the amount of damages; and whether he prove the justification or not, he may give in evidence the mitigating circumstances.—Rev., 502.

992. Allegation not denied, deemed true.—Every material allegation of the complaint not controverted by the answer, and every material allegation of new matter in the answer, constituting a counter-claim,

not controverted by the reply, shall, for the purposes of action, be taken as true. But the allegation of new matter in the answer, not relating to a counter-claim, or of new matter in reply, is to be deemed controverted by the adverse party as upon a direct denial or avoidance, as the case may require.—Rev., 503.

993. Pleading lost, copy used.—If an original pleading or paper be lost or withheld by any person, the court may authorize a copy thereof to be filed and used instead of the original.—Rev., 504.

CHAPTER XVIII.

AMENDMENTS.

994. As of course, when.—Any pleading may be once amended of course, without costs, and without prejudice to the proceedings already had, at any time before the period for answering it expires; or it can be so amended at any time, unless it be made to appear to the court that it was done for the purpose of delay, and the plaintiff or defendant will thereby lose the benefit of a term for which the cause, is or may be, docketed for trial; and if it appear to the court or judge that such amendment was made for such purpose, the same may be stricken out, and such terms imposed as to the court or judge may seem just. After the decision of a demurrer, the judge shall, if it appear that the demurrer was interposed in good faith, allow the party to plead over upon such terms as may be just.—Rev., 505 and 506.

995. To pleading, process or proceeding, when.—The judge or court may, before and after judgment, in furtherance of justice, and on such terms as may be proper, amend any pleading, process or proceeding, by adding or striking out the name of any party; or by correcting a mistake in the name of a party, or a mistake in any other respect; or by inserting other allegations material to the case; or when the amendment does not change substantially the claim or defense, by conforming the pleading or proceeding to the fact proved.—Rev., 507.

996. Effect of substantial.—When the complaint is so amended as to change the nature of the action and the character of the relief demanded, the judgment rendered shall not operate as an estoppel upon any person acquiring an interest in the property in controversy prior to the allowance of such amendment.—Rev., 508.

997. Unsubstantial defects disregarded.—The court or judge thereof shall, in every stage of the action, disregard any error or defect in the pleadings or proceedings, which shall not affect the substantial rights of the adverse party; and no judgment shall be reversed or affected by reason of such error or defect.—Rev., 509.

998. When plaintiff ignorant of defendant's name; true name inserted when known.—When the plaintiff shall be ignorant of the name of a defendant, such defendant may be designated in any pleading or proceeding by any name; and when his true name shall be discovered, the pleading or proceeding may be amended accordingly.—Rev., 510.

999. Supplemental pleadings.—The plaintiff and defendant respectively may be allowed on motion to make a supplemental complaint, answer or reply, alleging facts material to the case occurring after the former complaint, answer or reply, or of which the party was ignorant when his former pleading was made, and either party may set up by a supplemental pleading, the judgment or decree of any court of competent jurisdiction, rendered since the commencement of such action,

determining the matter in controversy in said action, or any part thereof, and if said judgment is set up by the plaintiff, the same shall be without prejudice to any provisional remedy theretofore issued or other proceedings had, in said action on his behalf.—Rev., 511.

1000. Time for pleading enlarged; proceedings made conformable to law.—The judge may likewise, in his discretion, and upon such terms as may be just, allow an answer or reply to be made, or other act to be done, after the time limited, or by an order to enlarge such time; and whenever any proceeding taken by a party fails to conform to law in any respect, the judge may, in like manner and upon like terms, permit an amendment of such proceeding, so as to make it conformable thereto.—Rev., 512.

1001. Mistake, surprise, excusable neglect.—The judge shall, upon such terms as may be just, at any time within one year after notice thereof, relieve a party from a judgment, order, verdict, or other proceeding taken against him through mistake, inadvertence, surprise or excusable neglect, and may supply an omission in any proceeding.—Rev., 513.

1002. Orders without notice, vacated.—An order made out of court, without notice to the adverse party, may be vacated or modified without notice by the judge who made it, or may be vacated or modified on notice, in the manner in which other motions are made.—Rev., 514.

CHAPTER XIX.

VARIANCE BETWEEN PLEADING AND PROOF.

1003. Material amendment, when.—No variance between the allegation in a pleading and the proof shall be deemed material, unless it has actually misled the adverse party, to his prejudice in maintaining his action upon the merits. Whenever it shall be alleged that a party has been so misled, that fact shall be proved to the satisfaction of the court, and in what respect he had been misled; and thereupon the judge may order the pleading to be amended upon such terms as shall be just.—Rev., 515.

1004. Immaterial.—Where the variance is not material as provided in the preceding section, the judge may direct the fact to be found according to the evidence, or may order an immediate amendment without costs.—Rev., 516.

1005. Failure of proof.—Where, however, the allegation of the cause of action or defense to which the proof is directed is unproved, not in some particular or particulars only, but in its entire scope and meaning, it shall not be deemed a case of variance, but a failure of proof.—Rev., 517.

CHAPTER XX.

REFERENCE.

1006. By consent.—All, or any, of the issues in the action, whether of fact or of law, or both, may be referred, upon the written consent of the parties, except in actions to annul a marriage, or for divorce and separation.—Rev., 518.

1007. Compulsory.—Where the parties do not consent, the court may, upon the application of either, or of its own motion, direct a reference in the following cases:

(1) Where the trial of an issue of fact shall require the examination of a long account on either side; in which case the referee may be directed to hear and decide the whole issue, or to report upon any specific question of fact involved therein; or,

(2) Where the taking of an account shall be necessary for the information of the court, before judgment, or for carrying a judgment order into effect; or,

(3) When the case involves a complicated question of boundary, or one which requires a personal view of the premises;

(4) Where a question of fact other than upon the pleadings shall arise, upon motion or otherwise, in any stage of the action;

(5) Where the issues of fact and questions of fact arise in an action of which the courts of equity of the state had exclusive jurisdiction prior to the adoption of the constitution of one thousand eight hundred and sixty-eight (1868), and in which the matter or amount in dispute is not less than the sum or value of five hundred dollars.

The compulsory reference under this subdivision shall not deprive either party of his constitutional right to a trial of the issues of fact arising on the pleadings by a jury, but such trial shall be had only upon the written evidence taken before the referee.—Rev., 519.

1008. Referees, how chosen; qualifications.—In all cases of reference the parties as to whom issues are joined in action (except when the defendant is an infant or an absentee) may agree in writing upon a person or persons, not exceeding three, and a reference shall be ordered to him or them, and to no other person or persons. And if such parties do not agree, the court shall appoint one or more referees, not more than three, who shall be free from exception. And no person shall be appointed referee to whom all parties in the action shall object. And no judge or justice of any court shall sit as referee in any action pending in the court of which he is judge or justice, and not already referred, unless the parties otherwise stipulate.—Rev., 520.

1009. Referees may administer oaths.—Every referee shall have power to administer oaths in any proceeding before him, and shall have generally the power vested in a referee by law.—Rev., 521.

1010. Conduct of trial; amendments; contempt punished.—The trial by referees shall be conducted in the same manner as a trial by the court. They shall have the same power to grant adjournments and to allow amendments to any pleadings and to the summons, as the court upon such trial, upon the same terms and with like effect. They shall have the same power to preserve order and punish all violations thereof upon such trial, and to compel the attendance of witnesses before them by attachment and to punish them as for contempt for non-attendance or refusal to be sworn or to testify, as is possessed by the court.—Rev., 522.

1011. Testimony reduced to writing.—The testimony of all the witnesses on both sides shall be reduced to writing by the referee, or under his direction, and signed by the witnesses, and the evidence so taken and signed shall be filed in the cause, and constitute a part of the record.—Rev., 523.

1012. Report, when and to whom made; review of; judgment on.—The referee shall make and deliver a report within such time as may be ordered by the court. The report of the referee shall be made to the clerk of the court in which the action is pending; either party, during the term or upon ten days notice to the adverse party out of term, may move the judge to review such report, and set aside, modify or confirm the same in whole or in part, and no judgment shall be entered on any reference except by order of the judge.—Rev., 524.

1013. Report, what to contain; exceptions; effect of special verdict, when.—The referee must state the facts found and the conclusions of law separately; and his decision must be given, and may be excepted to and reviewed in like manner and with like effect in all respects as in cases of appeal; and he may in like manner settle a case or exceptions. The report of the referee upon the whole issue shall stand as the decision of the court, and judgment may be entered thereon upon application to the judge. When the reference is to report the facts, the report shall have the effect of a special verdict.—Rev., 525.

CHAPTER XXI.

TRIAL.

1014. Defined.—A trial is the judicial examination of the issues between the parties, whether they be issues of law or of fact.—Rev., 526.

1015. How issue tried.—An issue of law must be tried by the judge or court, unless it be referred. An issue of fact must be tried by a jury, unless a trial by jury be waived, or a reference be ordered. Every other issue is triable by the court, or the judge thereof, who, however, may order the whole issue, or any specific question of fact involved therein, to be tried by a jury, or may refer it. And when a compulsory reference is ordered either party has the right to have the issues of fact tried by a jury.—Rev., 527.

1016. Of issues of fact.—Every issue of fact joined on the pleadings, and inquiry of damages required to be tried by a jury, shall be tried at the term of the court next ensuing such joinder of issue or order for inquiry: Provided, such issue shall have been joined or order for inquiry made more than thirty days before such term, but if not, they shall be tried at the second term after such joinder or order.—Rev., 528.

1017. Issues of fact before the clerk; bond for cost.—All issues of fact joined before the clerk shall be transferred to the superior court for trial at the next succeeding term of such court; and in case of such transfer neither party shall be required to give an undertaking for costs.—Rev., 529.

1018. Continuance before term; affidavit for.—Any party to an action may apply to the court in which it is pending, or to the judge thereof, after three days notice in writing to the adverse party, to have the trial deferred to a term subsequent to that in which it is regularly triable; such application must be made thirty days before the trial term, and must be on affidavit. The court or judge may defer the trial as asked for, on such terms as shall be just, if satisfied—

(1) That the applicant has used due diligence to have his case ready for trial; and,

(2) That by reason of circumstances beyond his control, which he shall set forth, he can not have a fair trial at the regular trial term; if the application is made by reason of the expected absence of a witness, it shall state the name and residence of the witness, the facts expected to be proved by him, and the grounds for the expectation of his non-attendance, and that the applicant expects to procure his evidence at or before some named subsequent term. The applicant shall in all cases pay the costs of the application.—Rev., 530.

1019. Continuance in term.—The judge at any time during the term at which an action is triable, may postpone the trial on the application of either party, and on such terms as shall be just, if satisfied—

(1) That the applicant has used due diligence to be ready for trial;

(2) That he can not have a fair trial at that term by reason of circumstances stated, and if the ground of application be the non-attendance of a witness, the affidavit shall contain the particulars required by subdivision two of the preceding section. Unless the applicant shall also set forth in his affidavit that the facts upon which his application is grounded occurred or came to his knowledge too late to allow him to apply as prescribed in the preceding section, and that his application is made as soon as it reasonably could be after the knowledge of such facts, the postponement shall not be granted, except on the terms of the payment of the costs in the action for the term.—Rev., 531.

1020. Counter affidavits as to continuance.—It shall be competent in all civil cases only for the opposing side to controvert the allegations of fact in applications for continuance, and to offer counter affidavits to that end. And the judge shall not allow such continuance unless he shall be satisfied, after thorough examination of the evidence as aforesaid, that the ends of justice demand it.—Rev., 532.

1021. Order of business.—The criminal calendar shall be first disposed of, unless, by consent of counsel, or for reasons satisfactory to the judge, particular criminal actions may be deferred. The issues on the civil calendar shall be disposed of in the following order, unless, for the convenience of parties or the dispatch of business, the court shall otherwise direct:

- (1) Issues of fact to be tried by a jury;
- (2) Issues of fact to be tried by the court;
- (3) Issues of law.—Rev., 533.

1022. Separate trials, when.—A separate trial between a plaintiff and any of the several defendants may be allowed by the court whenever, in its opinion, justice will thereby be promoted.—Rev., 534.

1023. Judge to explain law; express no opinion on facts.—No judge, in giving a charge to the petit jury, either in a civil or criminal action, shall give an opinion whether a fact is fully or sufficiently proven, such matter being the true office and province of the jury; but he shall state in a plain and correct manner the evidence given in the case, and declare and explain the law arising thereon.—Rev., 535.

1024. Instructions in writing, when.—Every judge, at the request of any party to an action on trial, made at or before the close of the evidence, before instructing the jury on the law, shall put his instructions in writing, and read them to the jury; he shall then sign and file them with the clerk as a part of the record of the action.—Rev., 536.

1024a. Written instructions in jury room, when.—Whenever a judge shall put his instructions to the jury in writing, either of his own will or at the request of any party to an action on trial, he shall, at the request of either party to the action, allow the jury to take his instructions with them on their retirement, and the jury shall return said instructions with their verdict to the court.—Rev., 537.

1025. Requests for instructions.—Counsel praying of the judge instructions to the jury, shall put their request in writing entitled of the cause, and sign them; otherwise the judge may disregard them; they shall be filed with the clerk as a part of the record.—Rev., 538.

1026. Demurrer to evidence.—When on trial of an issue of fact in a civil action, or special proceeding, the plaintiff shall have produced his evidence and rested his case, the defendant may move to dismiss the action, or for judgment, as in case of nonsuit. If the motion is allowed, the plaintiff may except and appeal to the supreme court. If the motion is refused, the defendant may except, and if the defendant introduces no evidence the jury shall pass upon the issues in the action, and the defendant shall have the benefit of his exception on appeal to the

supreme court. But after the motion is refused he may waive his exception and then introduce his evidence just as if he had not made the motion. But he may again move to dismiss after all the evidence on both sides is in. If the motion is then refused, upon consideration of all the evidence, he may except, and after the jury shall have rendered its verdict, he shall have the benefit of such latter exception on appeal to the supreme court.—Rev., 539.

1027. Jury trial waived, how.—Trial by jury may be waived by the several parties to an issue of fact, in actions on contract, and with the assent of the court in other actions in the manner following:

- (1) By failing to appear at the trial;
- (2) By written consent, in person or by attorney, filed with the clerk;
- (3) By oral consent, entered in the minutes.—Rev., 540.

1028. Findings of fact and conclusions of law by judge.—Upon the trial of an issue of fact by the court, its decision shall be given in writing, and shall contain a statement of the facts found, and the conclusions of law separately; and upon a trial of an issue of law, the decision shall be made in the same manner, stating the conclusions of law. Such decision shall be filed with the clerk during the court at which the trial takes place. Judgment upon the decision shall be entered accordingly.—Rev., 541.

1029. Exceptions, how and when taken.—(1) For the purposes of an appeal, either party may except to a decision on a matter of law arising upon such trial within ten days after the judgment, in the same manner and with the same effect as upon a trial by jury: Provided, that where the decision does not authorize a final judgment, but directs further proceedings before a referee or otherwise, either party may except thereto, and make a case or exception as above provided in case of an appeal.

(2) And either party desiring a review, upon the evidence appearing on the trial of the questions of law, may at any time within ten days after the judgment, or within such time as may be prescribed by the rules of the court, make a case or exceptions in like manner as upon a trial by jury, except that the judge, in settling the case, must briefly specify the facts found by him, and his conclusions of law.—Rev., 542.

1030. Proceedings upon judgment on issue of law.—On a judgment for the plaintiff upon an issue of law, the plaintiff may proceed in the manner prescribed by the first two subdivisions of section numbered five hundred and fifty-six [of the Revisal], upon failure of the defendant to answer, where the summons was personally served. If judgment be for the defendant, upon an issue of law, and if taking of an account or the proof of any fact be necessary to enable the court to complete the judgment, a reference or assessment by jury may be ordered, as provided in section numbered five hundred and fifty-seven [of the Revisal].—Rev., 543.

CHAPTER XXII.

ISSUES.

1031. Defined.—Issues arise upon the pleadings, when a material fact or conclusion of law is maintained by the one party and controverted by the other. They are of two kinds:

- (1) Of law; and,
- (2) Of fact.—Rev., 544.

1032. Of law.—An issue of law arises upon a demurrer to the complaint, answer or reply, or to some part thereof.—Rev., 545.

1033. Of fact.—An issue of fact arises—

(1) Upon a material allegation in the complaint controverted by the answer; or,

(2) Upon new matter in the answer, controverted by the reply; or,

(3) Upon new matter in the reply, except an issue of law is joined thereon.—Rev., 546.

1034. Which to be first tried.—Issues both of law and of fact may arise upon different parts of the pleadings in the same action. In such cases the issues of law must be first tried, unless the court otherwise directs.—Rev., 547.

1035. When and by whom made up.—The issues arising upon the pleadings, material to be tried, shall be made up by the attorneys appearing in the action, and reduced to writing, or by the judge presiding, before or during the trial.—Rev., 548.

1036. Form.—Issues shall be framed in concise and direct terms, and prolixity and confusion must be avoided, by not having too many issues.—Rev., 549.

CHAPTER XXIII.

VERDICT.

1037. General and special.—A general verdict is that by which the jury pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant. A special verdict is that by which the jury find the facts only, leaving the judgment to the court.—Rev., 550.

1038. Character of for different actions.—In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant by his answer claims a return thereof, the jury shall assess the value of the property, if their verdict be in favor of the plaintiff; or if they find in favor of the defendant, and that he is entitled to a return thereof, they may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the detention or taking and withholding such property. In every action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases, the court may direct the jury to find a special verdict in writing, upon all or any of the issues; and in all cases may instruct them if they render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon. The special verdict or finding shall be filed with the clerk, and entered upon the minutes.—Rev., 551.

1039. Special controls general.—Where a special finding of facts shall be inconsistent with the general verdict, the former shall control the latter, and the court shall give judgment accordingly.—Rev., 552.

1040. Jury to assess damages, when; counter-claim.—When a verdict is found for the plaintiff in an action for the recovery of money, or for the defendant when a counter-claim for the recovery of money is established, beyond the amount of the plaintiff's claim as established, the jury must also assess the amount of the recovery; they may also, under the direction of the court, assess the amount of the recovery when the court gives judgment for the plaintiff on the answer. If a counter-claim, established at the trial exceed the plaintiff's demand so established, judgment for the defendant must be given for the excess; or if it appear that the defendant is entitled to any other affirmative relief, judgment must be given accordingly.—Rev., 553.

1041. Entry of; motion for new trial; exceptions, when and how taken.—(1) Upon receiving a verdict, the clerk shall make an entry in his minutes, specifying the time and place of the trial, the names of the jurors and witnesses, the verdict, and either the judgment rendered thereon, or an order that the cause be reserved for argument or further consideration. If a different direction be not given by the court, the clerk must enter judgment in conformity with the verdict.

(2) If an exception be taken upon the trial, it must be reduced to writing at the time, with so much of the evidence or subject-matter as may be material to the exception taken; the same shall be entered in the judge's minutes and be filed with the clerk as a part of the case upon appeal.

(3) If there shall be error, either in the refusal of the judge to grant a prayer for instructions, or in granting a prayer, or in his instructions generally, the same shall be deemed excepted to without the filing of any formal objections.

(4) The judge who tries the cause may, in his discretion, entertain a motion, to be made on his minutes, to set aside a verdict and grant a new trial upon exceptions, or for insufficient evidence, or for excessive damages; but such motion can only be heard at the same term at which the trial is had. When such motion is heard and decided upon the minutes of the judge, and an appeal is taken from the decision, a case or exceptions must be settled in the usual form, upon which the argument of the appeal must be had.—Rev., 554.

CHAPTER XXIV.

JUDGMENT.

1042. Defined.—A judgment is either interlocutory, or the final determination of the rights of the parties in the action.—Rev., 555.

1043. By default final, when.—Judgment by default final may be had on failure of defendant to answer, as follows:

(1) When complaint sets forth one or more causes of action, each consisting of the breach of an express or implied contract to pay, absolutely or upon a contingency, a sum or sums of money fixed by the terms of the contract, or capable of being ascertained therefrom by computation. Upon proof of personal service of summons, or of service of summons by publication, on one or more of the defendants, and upon the complaint being verified, judgment shall be entered at the return term for the amount mentioned in the complaint, against the defendant or defendants, or against one or more of several defendants.

(2) Where the defendant, by his answer in such action, shall not deny the plaintiff's claim, but shall set up a counter-claim, amounting to less than the plaintiff's claim, judgment may be had by the plaintiff for the excess of said claim over the said counter-claim, in like manner in any such action, upon the plaintiff's filing with the court a statement admitting such counter-claim, which statement shall be annexed to and be a part of the judgment roll.

(3) In actions where the service of the summons was by publication, the plaintiff may, in like manner, apply for judgment, and the court must thereupon require proof to be made of the demand mentioned in the complaint, and if the defendant be not a resident of the state, must require the plaintiff or his agent to be examined on oath respecting any payments that have been made to the plaintiff, or to any one for his use on account of such demand, and may render judgment for the amount which he is entitled to recover. Before rendering judgment the

court may, in its discretion, require the plaintiff to cause to be filed satisfactory security, to abide the order of the court, touching the restitution of any estate or effects which may be directed by such judgment to be transferred or delivered, or the restitution of any money that may be collected under and by virtue of said judgment, in case the defendant or his representatives shall apply and be admitted to defend the action, and shall succeed in such defense.

(4) In actions for the recovery of real property, or for the possession thereof, upon the failure of the defendant to file the undertaking required by law, or upon failure of his sureties to justify according to law, unless the defendant is excused from giving such undertaking before answering.—Rev., 556.

1044. By default and inquiry.—In all other actions, except those mentioned in the preceding section, when the defendant shall fail to answer, and upon a like proof, judgment by default and inquiry may be had at the return term, and inquiry shall be executed at the next succeeding term. If the taking of an intricate or long account be necessary to execute properly the inquiry, the court, at the return term, may order the account to be taken by the clerk of the court, or some other fit person, and the referee shall make his report at the next succeeding term; in all other cases the inquiry shall be executed by a jury, unless by consent the court is to try the facts as well as the law.—Rev., 557.

1045. By default of defendant, when.—If the answer contain a statement of new matter constituting a counter-claim, and the plaintiff fail to reply or demur thereto, the defendant may move for such judgment as he is entitled to upon such statement; and, if the case require it, an order for an inquiry of damages, by a jury, may be made.—Rev., 558.

1046. Rendered in vacation, when.—In all cases where the superior court in vacation has jurisdiction, and all of the parties unite in the proceedings, they may apply for relief to the superior court in vacation, or in term time, at their election.—Rev., 559.

1047. On frivolous pleading.—If a demurrer, answer or reply be frivolous, the party prejudiced thereby may apply to the court or to the judge thereof for judgment thereon, and judgment may be given accordingly.—Rev., 560.

1048. Stands until reversed.—Every judgment given in a court of record having jurisdiction of the subject, shall be, and continue in force until reversed according to law.—Rev., 561.

1049. Applicable to justice's courts.—This subchapter shall apply, as near as may be, to proceedings in courts of justices of the peace.—Rev., 562.

1050. For whom and against whom given; failure to prosecute; married women.—(1) Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and it may determine the ultimate rights of the parties on each side, as between themselves;

(2) And it may grant to the defendant any affirmative relief to which he may be entitled;

(3) In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment may be proper;

(4) The court may also dismiss the complaint, with costs in favor of one or more defendants, in case of unreasonable neglect on the part of the plaintiff to serve the summons on other defendants, or to proceed in the cause against the defendant or defendants served. In an action

brought by or against a married woman, judgment may be given against her as well for costs as for damages, or both, for such costs and for such damages, in the same manner as against other persons, to be levied and collected of her separate estate, and not otherwise.—Rev., 563.

1051. How entered, party dying after verdict.—In no action shall the death of either party between the verdict and the judgment be alleged for error, if such judgment be entered within two terms after the verdict.—Rev., 564.

1052. Limited by demand in complaint, when.—The relief granted to the plaintiff, if there be no answer, can not exceed that which he shall have demanded in his complaint; but in any other case the court may grant him any relief consistent with the case made by the complaint and embraced within the issue.—Rev., 565.

1053. Legal title with covenants passed by, when.—In any action, wherein the court shall declare that a party is entitled to the possession of property, real or personal, the legal title whereof may be in another or others, parties to the suit, and the court shall order a conveyance of such legal title to him so declared to be entitled, or where, for any cause, the court shall order that one of the parties holding property in trust shall convey the legal title therein to be held in trust to another person, although not a party, the court, after declaring the right and ordering the conveyance, shall have power also, to be used in its discretion, to declare in the order then made, or in any, made in the progress of the cause, that the effect thereof shall be to transfer to the party to whom the conveyance is directed to be made, the legal title of the said property, to be held in the same plight, condition and estate as though the conveyance ordered was in fact executed; and shall bind and entitle the parties ordered to execute or to take benefit of the conveyance in and to all such provisions, conditions and covenants as may be adjudged to attend the conveyance, in the same manner and to the same extent as the conveyance would if the same were executed according to the order. And any party taking benefit under the judgment may have the same redress at law on account of the matter adjudged as he might on the conveyance, if the same had been executed.—Rev., 566.

1054. Regarded as a deed and registered, when.—Every judgment, in which the transfer of title shall be so declared, shall be regarded as a deed of conveyance, executed in due form and by capable persons, notwithstanding the want of capacity in any person ordered to convey, and shall be registered in the proper county, under the same rules and regulations as may be prescribed for conveyances of similar property executed by the party; and all laws which may be passed for extending the time for registration of deeds shall be deemed to include such judgments, provided the conveyance, if actually executed, would be so included.—Rev., 567.

1055. How registered.—The party desiring registration of such judgment shall produce to the register a copy thereof, certified by the clerk of the court in which it is enrolled, under the seal of the court, and the register shall record both the judgment and certificate.—Rev., 568.

1056. Registered copy evidence.—In all legal proceedings, touching the right of parties derived under such judgment, a certified copy thereof from the register's books shall be evidence of its existence and of the matters therein contained, as fully as if the same were proved by a perfect transcript of the whole case.—Rev., 569.

1057. In action for recovery of personal property.—In an action to recover the possession of personal property, judgment for the plaintiff

may be for the possession, or for the recovery of possession, or for the value thereof, in case a delivery can not be had, and the damages for the detention. If the property has been delivered to the plaintiff, and the defendant claims a return thereof, judgment for the defendant may be for a return of the property, or for the value thereof in case a return can not be had, and damages for taking and withholding the same.—Rev., 570.

1058. What judge approves judgments.—In all cases where a judgment, decree or order of the superior court is required to be approved by a judge, it shall be approved by the judge having jurisdiction of receivers and injunctions.—Rev., 571.

1059. Judgment roll.—Unless the party or his attorney shall furnish a judgment roll, the clerk, immediately after entering the judgment, shall attach together and file the following papers, which shall constitute the judgment roll:

(1) In case the complaint be not answered by the defendant, the summons and complaint, or copies thereof, proof of service, and that no answer has been received, the report, if any, and a copy of the judgment.

(2) In all other cases, the summons, pleadings, or copies thereof, and a copy of the judgment, with any verdict or report, the offer of the defendant, exceptions, case, and all orders and papers in any way involving the merits and necessarily affecting the judgment.—Rev., 572.

1060. Docketed and indexed; all of same term as of first day.—Every judgment of the superior court affecting the right to real property, and any judgment requiring in whole or in part the payment of money, shall be entered by the clerk of said superior court on the judgment docket of said court. The entry shall contain the names of the parties, and the relief granted, date of judgment and date of docketing; and the clerk shall keep a cross-index of the whole, with the dates and numbers thereof. All judgments rendered in any county by the superior court thereof, during a term of the court, and docketed during the same term, or within ten days thereafter, shall be held and deemed to have been rendered and docketed on the first day of said term.—Rev., 573.

1061. When, where and how to be docketed; lien.—Upon filing a judgment roll upon a judgment affecting the title of real property, or directing in whole or in part the payment of money, it shall be docketed on the judgment docket of the superior court of the county where the judgment roll was filed, and may be docketed on the judgment docket of the superior court of any other county upon the filing with the clerk thereof a transcript of the original docket, and shall be a lien on the real property in the county where the same is docketed, of every person against whom any such judgment shall be rendered, and which he may have at the time of the docketing thereof in the county in which such real property is situated, or which he shall acquire at any time thereafter, for ten years from the date of the rendition of the judgment. But the time during which the party recovering or owning such judgment shall be or shall have been restrained from proceeding thereon by an order of injunction, or other order, or by the operation of any appeal, or by a statutory prohibition, shall not constitute any part of the ten years aforesaid, as against the defendant in such judgment, or the party obtaining such orders or making such appeal, or any other person who is not a purchaser, creditor or mortgagee in good faith.—Rev., 574.

1062. Of supreme court docketed in superior court; lien; transcript.—It shall be the duty of the clerk of the supreme court, on application of the party obtaining judgment in said court, directing in whole or in part the payment of money, or affecting the title to real estate, or on

the like application of the attorney of record of said party, to certify under his hand and seal of said court a transcript of said judgment, setting forth the title of said court, the names of the parties thereto, the relief granted, that said judgment was so rendered by said court, the amount and date of said judgment, what part thereof bears interest and from what time; and said clerk shall send such certificate and transcript to the clerks of the superior courts of such counties as he may be directed; and the clerk of the superior court receiving the said certificate and transcript shall docket the same in like manner as judgment rolls of the superior court may be docketed. And when so docketed, the lien of said judgment shall be the same in all respects, be subject to the same restrictions and qualifications, and the time shall be reckoned as is provided and prescribed in the preceding sections for judgments of the superior court, so far as the same may be applicable. The party desiring the certificate and transcript provided for in this section, may obtain the same at any time after such judgment has been rendered, unless the supreme court shall otherwise direct.—Rev., 575.

1063. Federal court judgments docketed; lien.—Judgments and decrees rendered in the circuit and district courts of the United States within this state may be docketed on the judgment dockets of the superior courts in the several counties of this state for the purpose of creating liens of such judgments and decrees upon property within the county where the same may be so docketed, in like manner as the judgments of said superior courts may be docketed, for the purpose of creating liens upon property, but in no other manner, extent or order than as contemplated, provided and intended by the act of congress entitled "An act to regulate the liens of judgments and decrees of the courts of the United States," approved August 1, 1888. And it shall be the duty of the clerks of the said superior courts, when a judgment roll of said circuit and district courts shall be filed with him, to docket the same as judgments of the said superior courts are required to be docketed.—Rev., 576.

1064. Judgment paid to clerk; docket credited; transcript to other counties.—The party against whom any judgment for the payment of money may be rendered, by any court of record, may pay the whole, or any part thereof, to the clerk of the court in which the same may have been rendered, at any time thereafter, although no execution may have issued on such judgment; and such payment of money shall be good and available to the party making the same, and the clerk shall enter the payment on the judgment docket of the court, and immediately forward a certificate thereof to the clerk of the superior court of each county, to whom a transcript of said judgment has been sent, and the clerk of such superior court shall enter the same on the judgment docket of such court, and file the original with the judgment roll in the action.—Rev., 577.

1065. Clerk to pay money to party entitled.—The clerk, to whom money shall be paid as aforesaid, shall pay the same to the party entitled to receive it, under the same rules and penalties as if the money had been paid into his office by virtue of an execution.—Rev., 578.

1066. Credits upon judgments.—Where any payment has been made on any judgment docketed in the office of the clerk of the superior court, and no entry thereof has been made on the judgment docket, or where any docketed judgment appealed from has been reversed or modified on appeal and no entry thereof has been made on such docket, any person interested therein may move in the cause before the clerk, upon affidavit after notice to all persons interested, to have such credit, reversal or modification entered; and upon the hearing before the clerk he may hear affidavits, oral testimony, depositions and any other competent evidence, and shall render his judgment; from which any party

may appeal in the same manner as in appeals in special proceedings. On the trial of any issue of fact on such appeal, either party may demand a jury trial, which shall be had upon the evidence before the clerk, which he shall reduce to writing. On a final judgment ordering any such credit, reversal or modification, transcript thereof shall be sent by the clerk of the superior court to each county in which the original judgment has been docketed, and the clerk of such county shall enter the same on the judgment docket of his county opposite such judgment and file the transcript. No final process shall issue on any such judgment after affidavit filed in the cause until the motion for credit, reversal or modification shall have been finally disposed of.—Rev., 579.

1067. Clerk's entries when docketed judgment of magistrate is reversed, modified or affirmed on appeal.—Whenever a transcript of a judgment taken before a justice of the peace is docketed on the judgment docket of the superior court and the same is afterwards reversed, modified or affirmed in the superior court on appeal by a final judgment, the clerk of said court shall, within ten days thereafter, enter on the judgment docket where the said transcript was first docketed, the word Reversed, Modified, or Affirmed, as the case may be, and further refer to the book and page where can be found the judgment reversing, modifying, or affirming the former judgment. Any clerk failing to perform such duties as required of him in this section shall pay to any person all such damages as he may have sustained by such failure.—Laws 1907, c. 880.

CHAPTER XXV.

JUDGMENT CONFESSED.

1068. When and for what.—A judgment by confession may be entered, without action, either in or out of term, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this subchapter.—Rev., 580.

1069. Debtor to make verified statement.—A statement in writing must be made, signed by the defendant, and verified by his oath, to the following effect:

(1) It must state the amount for which judgment may be entered, and authorize the entry of judgment therefor.

(2) If it be for money due, or to become due, it must state concisely the facts out of which it arose, and must show that the sum confessed therefor is justly due, or to become due.

(3) If it be for the purpose of securing the plaintiff against a contingent liability, it must state concisely the facts constituting the liability, and must show that the sum confessed therefor does not exceed the same.—Rev., 581.

1070. Judgment and execution.—The statement may be filed with the clerk of the superior court of the county in which the defendant resides, or if he does not reside in the state, of some county in which he has property. The clerk shall indorse upon it and enter on his judgment docket a judgment of the court for the amount confessed, with three dollars costs, together with disbursements. The statement and affidavit, with the judgment indorsed, shall thenceforth become the judgment roll. Executions may be issued and enforced thereon in the same manner as upon judgments in other cases in such courts. When the debt for which the judgment is recovered is not all due, or is payable

in instalments, and the instalments are not all due, the execution may issue upon such judgment for the collection of such instalments as have become due, and shall be in the usual form; but shall have indorsed thereon, by the attorney or person issuing the same, a direction to the sheriff to collect the amount due on such judgment, with interest and costs, which amount shall be stated, with interest thereon, and the costs of said judgment. Notwithstanding the issue and collection of such execution, the judgment shall remain as security for the instalments thereafter to be come due; and whenever any further instalment becomes due, execution may, in like manner, be issued for the collection and enforcement of the same.—Rev., 582.

CHAPTER XXVI.

APPEAL.

1071. See sections 583 to 614, inclusive, of the Revisal.

CHAPTER XXVII.

EXECUTION.

1072. Judgment enforced by.—Where a judgment requires the payment of money or the delivery of real or personal property, the same may be enforced in those respects by execution, as provided in this subchapter. Where it requires the performance of any other act a certified copy of the judgment may be served upon the party against whom it is given, or upon the person or officer, who is required thereby or by law to obey the same, and his obedience thereto enforced. If he refuse, he may be punished by the court as for contempt.—Rev., 615.

Where a judgment debtor dies, the creditor can not enforce the judgment by execution, but must collect his debt in the regular course of the administration of the estate.—Holden v. Strickland, 116—185.

1073. Kinds of; signed by clerk; sealed, when.—There shall be three kinds of execution: one against the property of the judgment debtor, another against his person, and the third for the delivery of the possession of real or personal property, or such delivery with damages for withholding the same. They shall be deemed the process of the court, and shall be subscribed by the clerk, and when to run out of his county, must be sealed with the seal of his court.—Rev., 616.

1074. Against married woman.—An execution may issue against a married woman, and it shall direct the levy and collection of the amount of the judgment against her from her separate property, and not otherwise.—Rev., 617.

1075. Clerks to issue in six weeks; alias penalty.—The clerks of the superior court shall issue executions on all judgments rendered in their respective courts, unless otherwise directed by the plaintiff therein, within six weeks of the rendition of the judgment, and shall indorse upon the record the date of such issue; and if the executions issued are not returned satisfied to the courts to which they are made returnable, the clerks shall issue alias executions, within six weeks thereafter, unless otherwise instructed as aforesaid. And every clerk who shall fail to comply with the requirements of this section shall be liable to be amerced in the sum of one hundred dollars, for the benefit

of the party aggrieved, under the same rules that are provided by law for americing sheriffs, and shall be further liable to the party injured by suit upon his bond.—Rev., 618.

1076. Within three years as of course.—The party in whose favor judgment has been heretofore or shall hereafter be given, and in case of his death, his personal representatives duly appointed, may at any time within three years after the entry of judgment, proceed to enforce the same, by execution, as provided in this subchapter.—Rev., 619.

1077. After three years, by leave obtained after notice.—After the lapse of three years from the entry of judgment on the judgment docket, an execution can be issued only by leave of the court, upon motion, with personal notice to the adverse party, unless he be absent or non-resident, or can not be found to make such service, in which case such service may be made by publication, or in such other manner as the court shall direct. Such leave shall not be given unless it be established by the oath of the party, or by other satisfactory proof, that the judgment, or some part thereof, remains unsatisfied and due. But the leave shall not be necessary when execution has been issued on the judgment within three years next preceding the suing for execution, and return thereof unsatisfied in whole or in part.—Rev., 620.

The affidavit to revive judgment can be made by a party in interest, although the judgment debtor is dead.—*Latham v. Dixon*, 82—55.

A judgment of a justice does not become dormant by the failure to issue execution thereon pending an appeal from the judgment when bond has been given to stay execution.—*Dysart v. Brandreth*, 118—968.

1078. Stay of, pending appeal.—Whenever an appeal from any judgment shall be pending, and the undertaking requisite to stay execution on such judgment shall have been given, and the appeal perfected, the court in which such judgment was recovered may, on special motion, after notice to the person owning the judgment, on such terms as they shall see fit, direct an entry to be made by the clerk on the docket of such judgment, that the same is secured on appeal, and no execution shall issue upon such judgment during the pendency of the appeal.—Rev., 621.

1079. To what counties issued; land sold where; title passed.—When the execution is against the property of the judgment debtor, it may be issued to the sheriff of any county where the judgment is docketed. No execution shall issue from the superior court upon any judgment until such judgment shall be docketed in the county to which the execution shall be issued. When it requires the delivery of real or personal property it must be issued to the sheriff of the county where the property, or some part thereof, is situated. Executions may be issued at the same time to different counties. Real property adjudged to be sold must be sold in the county where it lies, by the sheriff of the county or by a referee appointed by the court for that purpose; and thereupon the sheriff or referee must execute a conveyance to the purchaser, which conveyance shall be effectual to pass the rights and interests of the parties adjudged to be sold.—Rev., 622.

1080. Issued from and returned to court of rendition.—Executions and other process for the enforcement of judgments shall issue only from the court in which the judgment for the enforcement of such execution, other final process, or any of them, may issue, was rendered; and the returns of executions or other final process shall be made to the court of the county from which the same issued.—Rev., 623.

1081. When tested; to what term returnable.—Executions shall be tested as of the term next before the day on which they were issued, and shall be returnable to the next term of the court beginning not less than forty days after the issuing thereof, and no execution against property shall issue until the end of the term during which the judgment was rendered.—Rev., 624.

1082. Against the person, when.—If the action be one in which the defendant might have been arrested, an execution against the person of the judgment debtor may be issued to any county within the state, after the return of an execution against his property unsatisfied in whole or in part. But no execution shall issue against the person of a judgment debtor, unless an order of arrest has been served, as provided in the subchapter Arrest and Bail, or unless the complaint contains a statement of facts showing one or more of the causes of arrest required by law, whether such statement of facts be necessary to the cause of action or not.—Rev., 625.

1083. Defendant dying in execution, new execution against the property.—Parties, at whose suit the body of any person shall be taken in execution for any judgment recovered, their executors or administrators, may, after the death of the person so taken and dying in execution, have new execution against the property of the person deceased, as they might have had if such person had never been in execution.—Rev., 626.

1084. Form of execution.—The execution must be directed to the sheriff, or coroner when the sheriff is a party or interested, subscribed by the clerk of the court, and must intelligibly refer to the judgment, stating the county where the judgment roll or transcript is filed, the names of the parties, the amount of the judgment, if it be for money, and the amount actually due thereon, and the time of docketing in the county to which the execution is issued, and shall require the officer substantially as follows:

Against property—no lien on personal property until levy.—If it be against the property of the judgment debtor, it shall require the officer to satisfy the judgment out of the personal property of such debtor; and if sufficient personal property can not be found, out of the real property belonging to him on the day when the judgment was docketed in the county, or at any time thereafter; but no execution against the property of the judgment debtor shall be a lien on the personal property of such debtor as against any bona fide purchaser from him for value, or as against any other execution, except from the levy thereof.

Against property in hands of personal representative.—If it be against real or personal property in the hands of personal representatives, heirs, devisees, legatees, tenants of real property or trustees, it shall require the officer to satisfy the judgment out of such property.

Against the person.—If it be against the person of the judgment debtor, it shall require the officer to arrest such debtor, and commit him to the jail of the county until he shall pay the judgment or be discharged according to law.

For delivery of specific property.—If it be for the delivery of the possession of real or personal property, it shall require the officer to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may at the same time require the officer to satisfy any costs, damages, rents, or profits recovered by the same judgment, out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered, to be specified therein, if a delivery thereof can not be had; and if sufficient personal property can not be found, then out of the real property belonging to him on the day when the judgment was docketed, or at any time thereafter, and shall in that respect be deemed an execution against property.

For purchase money of land.—If the answer in an action for the recovery of a debt contracted for the purchase of land does not deny that the debt was so contracted, or if the jury should find that the debt was so contracted, it should be the duty of the court to have embodied

in the judgment that the debt sued on was one contracted for the purchase money of said land, describing it briefly; and it shall also be the duty of the clerk to set forth in the execution that the said debt was one contracted for the purchase of said land, the description of which shall be set out briefly as in the complaint.—Rev., 627.

Where a sheriff levies on land under an execution, and before a sale an execution on a judgment having a prior lien comes into his hands, he shall apply the proceeds of sale to the latter.—*Motz v. Stowe*, 83—434.

But the proceeds of such sale are not to be applied to the claim of a prior judgment creditor, whose execution was not in the sheriff's hands at the time of the sale. The lien, however, of such prior judgment is not thereby affected.—*Worsley v. Bryan*, 86—343.

As against junior execution creditors, it is necessary to the validity of a levy of a senior execution upon personal property that the officer should take into his possession and retain, either in person or by an agent for that purpose, the property seized until a sale. As against other persons, including purchasers for value, a levy on personal property by going to it, so as to have power to take it into his possession, if the officer chooses, and endorsing it on the process, will be good, though actual possession may not have been acquired, or having been acquired, the property is left in the possession of the debtor.—*Sawyer v. Bray*, 102—79.

1085. Variance between judgment and.—Whenever property may have been sold by an officer by virtue of any execution or other process commanding the sale thereof, no variance between the execution and the judgment whereon the same was issued, in the sum due in the manner in which it is due or in the time when it is due, shall invalidate or affect the title of the purchaser of such property.—Rev., 628.

1086. What may be sold under.—The property, estate and effects of the judgment debtor, not exempted from sale under the constitution and laws of this state, may be levied on and sold under execution as hereinafter prescribed:

(1) The goods, chattels, houses, lands, tenements, and other hereditaments, and real estate belonging to him.

(2) All leasehold estates of three years duration or more, owned by him.

(3) The equity of redemption, and legal right of redemption, in lands, tenements, rents or other hereditaments, pledged or mortgaged by him.

(4) Any lands, tenements, rents and hereditaments, or any goods and chattels of which any person shall be seized or possessed in trust for him.—Rev., 629.

1087. Sale of trust estates; purchaser's title.—Upon the sale under execution of the estates mentioned in subdivision four of the preceding section, the sheriff shall execute a deed to the purchaser, and the purchaser thereof shall hold and enjoy the same freed and discharged from all encumbrances of the person so seized or possessed in trust as aforesaid.—Rev., 630.

1088. Sheriff's deed on sale of equity of redemption.—The sheriff selling the equity of redemption and legal right of redemption, as set forth in section six hundred and twenty-nine, subdivision three, shall set forth in the deed to the purchaser thereof that the said estates were under mortgage at the time of judgment, or levy in the case of personal property and sale.—Rev., 631.

1089. Growing crops exempted from.—No execution shall be levied on growing crops until the same are matured.—Rev., 632.

1090. Forthcoming bond for personal property.—If any sheriff or other officer, who may have levied an execution or other process upon personal property, shall permit the same to remain with the possessor, such officer may take a bond for the forthcoming thereof to answer the said execution or process, which bond shall be attested by a credible witness; but the officer shall, nevertheless, in all respects, remain liable as heretofore to the plaintiff's claim.—Rev., 633.

1091. Surety furnished list of the property; possession his; sale in thirty days.—When such bond shall be taken, the officer shall specify

therein the property levied upon, and shall furnish to the surety a list of the property in writing under his hand, attested by at least one credible witness, and stating therein the day of sale; and the property so levied upon shall be deemed in the custody of the surety, as the bailee of the officer; and all other executions thereafter levied on said property shall create a lien on the same from and after the respective levies, and shall be satisfied accordingly out of the proceeds of the sale of said property; but the officer thereafter levying shall not take the property out of the custody of the surety: Provided, that in all such cases, sales of chattels shall take place within thirty days after the first levy; and, if sale shall not be made within the time aforesaid, any other officer who may have levied upon the property, may seize and sell the same.—Rev., 634.

1092. Summary remedy on forthcoming bond.—If the condition of such bond be broken, the sheriff or other officer, on giving ten days previous notice, in writing, to any obligor therein, may, on motion, have judgment against him in a summary manner, before the superior court, or before a justice of the peace, as the case may be, of the county in which such officer may reside, for all such damages as said officer may have sustained, or be adjudged liable to sustain, not exceeding the penalty of the bond, to be ascertained by a jury, under the direction of the court or justice.—Rev., 635.

1093. Returns of, entered on judgment docket; penalty for clerk's failure.—When any such execution shall be returned as herein provided, the return of the sheriff or other officer shall be noted by the clerk on the judgment docket; and when the same shall be returned satisfied, or partially satisfied, it shall be the duty of the clerk of the court to which the same is returned to send a copy of such last mentioned return, under his hand, to the clerk of the superior court of each county in which such judgment is docketed, whose duty it shall be to note such copy in his judgment docket, opposite said judgment, and to file said copy with the transcript of the docket of said judgment in his office. Any clerk failing to send a copy of the payments on said execution or judgment to the clerks of the superior court of the counties wherein a transcript of the judgment has been docketed, and any clerk failing to note said payment on the judgment docket of his court, shall, on motion, be fined one hundred dollars nisi for said failure, and said conditional judgment shall be made absolute upon notice to show cause at the succeeding term of the superior court of his county.—Rev., 636.

1094. Cost of keeping horses, etc.—The court or justice shall make a reasonable allowance to officers for keeping and maintaining horses, cattle, hogs, or sheep, and all other property the keeping of which may be chargeable to them, taken into their custody under legal process; such allowance may be retained by the officers out of the sales of the property, in preference to the satisfaction of the process under which the property was seized or sold.—Rev., 637.

1095. Verified account of expenses of keeping filed.—Every such officer shall make out his account, and if required shall give the debtor or his agent a copy thereof, signed by his own hand, and shall return the account with the execution or other process, under which the property has been seized or sold, to the justice or the court to whom the execution or process is returnable, and shall swear to the correctness of the several items therein set forth; otherwise he shall not be permitted to retain the same.—Rev., 638.

1096. Purchaser of defective title; remedy against defendant.—Where property, real or personal, shall be sold on any execution or decree, by any officer authorized to make the sale, and the sale is

legally and in good faith made, and such property be not the property of the person against whose estate such execution or decree may have issued, by reason of which the purchaser may have been deprived of the same property, or may have been compelled to pay damages in lieu thereof to the owner; in every such case the purchaser, his executors or administrators, may sue the person against whom such execution or decree may have issued, or the person legally representing him, in a civil action, and recover such sum as he may have paid for the property, with interest from the time of payment: Provided, that such property, if the same is personal property, be present at the sale, and actually delivered to the purchaser.—Rev., 639.

1097. Costs on execution paid to clerk; penalty.—The sheriff or other officer shall pay the costs on all executions which shall be satisfied in whole or in part, to the clerk of the court from which the execution issued, and to no other person, on the second day of the term of the court; and any such officer making default herein shall forfeit and pay forty dollars for the benefit of the party aggrieved. under the same rules that are provided by law for amercing sheriffs.—Rev., 640.

CHAPTER XXVIII.

EXECUTION SALES.

1098. How advertised; cost of newspaper publication.—No real property shall be sold under execution, deed in trust, mortgage, or other contract hereafter executed, until notice of said sale shall be posted at the court-house door and three other public places in the county for thirty days immediately preceding such sale, and also published for four weeks in some newspaper published in the county, if a paper is published in the county: Provided, the cost of such newspaper publication shall not exceed three dollars, to be taxed as cost in the action, special proceeding or proceeding to sell.—Rev., 641.

Note.—See also s. 1042 of the Revisal.

1099. Notice of, served on defendant; on governor, when.—In addition to the advertisement above required, the sheriff shall in every case, at least ten days before a sale of real property under execution, serve a copy of so much of the advertisement as relates to the real property of any defendant on him personally, if he be found in the county, or on his agent, if he have a known agent therein, or if he can not be found within the county, and has no known agent therein, but his address be known, by mail to such address; and the date of service shall be ascertained by the usual course of the mail from the place where sent to the place of its address: Provided, that in case of the sale under execution, or under the order of any court, of any property, real or personal, in which the state shall be interested as a stockholder or otherwise, notice in writing shall be served upon the governor and attorney-general, at least thirty days before the sale, of the said time and place of sale, and under what process the sale is made, otherwise said sale shall be invalid.—Rev., 642.

1100. Sale days under or by order of court.—All real property sold under execution, or by order of court, shall be sold at the court-house door of the county in which the property or some part thereof is situate, on the first Monday in every month, or during the first three days of the term of the superior court of said county, unless in the order directing the sale, some other place and time is designated; and then it shall be sold as directed in such order, on any day except Sunday or holidays, after advertising the same as required by law.—Rev., 643.

1101. Sales between ten and four o'clock.—No sale under an execution or decree shall commence before ten o'clock in the morning, or continue after four o'clock in the evening, of the day on which the sale is to be made, except that in towns or cities of more than five thousand inhabitants public sales of goods, wares and merchandise may be continued until the hour of ten o'clock p. m.—Rev., 644.

1102. Postponed from day to day.—The sheriff or other person making the sale, for the absence of bidders or any other just cause, may postpone the same from day to day, but not more than six days in all, and upon such postponement he shall post a notice thereof on the court-house door of his county.—Rev., 645.

1103. Postponed more than six days validated.—All sales of realty made under executions issued prior to March the fifteenth, one thousand nine hundred and one, on judgments regularly obtained in courts of competent jurisdiction, are hereby validated, whether such sales were continued from day to day or for a longer period, not exceeding ten days: Provided, that such executions and sales are in all other respects regular: Provided further, that purchasers and their assigns shall have held continuous and adverse possession under a sheriff's deed for three years: Provided further, that the rights of minors and married women shall in nowise be prejudiced hereby.—Rev., 646.

1104. Private acts regulating land sales repealed.—All private acts, by which lands in particular counties are required or allowed to be sold at places, or at times, other than those hereinafter prescribed, are hereby repealed.—Rev., 647.

1105. Advertisement of sale of personal property.—No sale of personal property under execution shall be made until the same has been advertised for ten days at the door of the court-house of the county in which the same is to be sold, and at three other public places in said county, and the advertisement shall designate the place and the time of said sale.—Rev., 648.

Personal property, when sold under execution, should be present at the sale and in possession of the officer, so that immediate delivery may be made to the purchaser. These requirements will be met, however, if the property is in plain view or so near that it can be personally inspected by all present at the sale who may choose to examine it.—*Alston v. Morphew*, 113—460.

1106. Penalty for selling contrary to law.—Any sheriff or other officer, who shall make any sale contrary to the true intent and meaning of this subchapter, shall forfeit and pay two hundred dollars to any person suing for the same, one-half for his own use and the other half to the use of the county where the offense is committed.—Rev., 649.

1107. No sale for want of bidders, officer's return; penalty.—Whenever a sheriff or other officer shall return upon any execution, that he has made no sale for want of bidders, he shall state in his return the several places at which he has advertised the sale of the property levied on, and the places at which he hath offered the same for sale; and any officer failing to make such specification shall, on motion, be subject to a fine of forty dollars; and every constable, for a like omission of duty, shall be subject to a fine of ten dollars, for the use and benefit of the plaintiff in the execution; for which, on motion of the plaintiff, judgment shall be granted by the court to which the execution shall be returned; or, in the case of a justice's execution, by any justice to whom the execution shall be returned: Provided, that nothing in this section, nor any recovery under the same, shall be a bar to any action for a false return against the sheriff or other officer.—Rev., 650.

1108. Officer to prepare deeds for property sold.—Sheriffs or other officers, selling lands by authority of any execution or process, shall, upon payment of the price, prepare, execute and deliver to the pur-

chaser a deed for the property purchased: Provided, that the purchaser of land shall furnish the officer with a description of the land.—Rev., 651.

CHAPTER XXIX.

BETTERMENTS.

1109. Petition by claimant; execution suspended; issues found.—Any defendant against whom a judgment shall be rendered for land, may, at any time before the execution of such judgment, present a petition to the court rendering the same, stating that he, or those under whom he claims, while holding the premises under a color of title believed by him or them to be good, have made permanent improvements thereon, and praying that he may be allowed for the same, over and above the value of the use and occupation of such land; and thereupon the court may, if satisfied of the probable truth of the allegation, suspend the execution of such judgment and impanel a jury to assess the damages of the plaintiff and the allowance to the defendant for such improvements: Provided, that in any such action, such inquiry and assessment may be made upon the trial of the cause.—Rev., 652.

1110. Annual value of land and waste charged against defendant.—The jury, in assessing such damages, shall estimate against the defendant the clear annual value of the premises during the time he was in possession thereof, exclusive of the use by the tenant of the improvements thereon made by himself or those under whom he claims, and also the damages for waste, or other injury, to the premises committed by the defendant.—Rev., 653.

1111. Damages and rental value limited to three years, when.—The defendant shall not be liable for such annual value for any longer time than three years before the suit, or for damages for any such waste or other injury done before said three years, unless when he claims for improvements as aforesaid.—Rev., 654.

1112. Value of improvements estimated.—If the jury shall be satisfied that the defendant, or those under whom he claims, made on the premises, at a time when there was reason to believe the title good under which he or they were holding the said premises, permanent and valuable improvements, they shall estimate in his favor the value of such improvements as were so made before notice in writing of the title under which the plaintiff claims, not exceeding the amount actually expended in making them and not exceeding the amount to which the value of the premises is actually increased thereby at the time of the assessment.—Rev., 655.

1113. Improvements to balance rents.—If the sum estimated for the improvements exceed the damages estimated by the jury against the defendant as aforesaid, they shall then estimate against him for any time before the said three years, the rents and profits accrued against, or damages for waste or other injury done by him, or those under whom he claims, so far as may be necessary to balance his claim for improvements; but in such case he shall not be liable for the excess, if any, of such rents, profits or damages beyond the value of improvements.—Rev., 656.

1114. Verdict and judgment to be for difference.—After offsetting the damages assessed for the plaintiff, and the allowances to the defendant for the improvements, if any, the jury shall find a verdict for the balance for the plaintiff or defendant, as the case may be, and judgment shall be entered therefor according to the verdict.—Rev., 657.

1115. Balance due defendant a lien.—Any such balance due to the defendant shall constitute a lien upon the land recovered by the plaintiff until the same shall be paid.—Rev., 658.

1116. Recovery by plaintiff from remainderman, betterments paid.—If the plaintiff claim only an estate for life in the land recovered and pay any sum allowed to the defendant for improvements, he or his personal representative may recover at the determination of his estate from the remainderman or reversioner, the value of the said improvements as they then exist, not exceeding the amount as paid by him, and shall have a lien therefor on the premises in like manner as if they had been mortgaged for the payment thereof, and may keep possession of said premises until it be paid.—Rev., 659.

1117. Not applicable to suit by mortgagee.—Nothing herein shall extend or apply to any suit brought by a mortgagee or his heirs or assigns against a mortgagor or his heirs or assigns for the recovery of the mortgaged premises.—Rev., 660.

1118. Value of premises without improvements, when.—When the defendant shall claim allowance for improvements, the plaintiff may by entry on the record require that the value of his estate in the premises without the improvements shall also be ascertained.—Rev., 661.

1119. How estimated.—The value of the premises in such cases shall be estimated as it would have been at the time of the inquiry, if no such improvements had been made on the premises by the tenant or any person under whom he claims, and shall be ascertained in the manner hereinbefore provided for estimating the value of improvements.—Rev., 662.

1120. Plaintiff's election that defendant take premises.—The plaintiff in such case, if judgment is rendered for him, may, at any time during the same term, or before judgment is rendered on the assessment of the value of the improvements, in person or by his attorney in the cause, enter on the record his election to relinquish his estate in the premises to the defendant at the value as ascertained, and the defendant shall thenceforth hold all the estate that the plaintiff had therein at the commencement of the suit: Provided, he pay therefor the said value with interest in the manner in which the court may order it to be paid.—Rev., 663.

1121. Payments made to court; land sold on default.—The payments shall be made to the plaintiff, or into court for his use, and the land shall be bound therefor, and if the defendant fail to make the said payments within or at the times limited therefor respectively, the court may order the land to be sold and the proceeds applied to the payment of said value and interest, and the surplus, if any, to be paid to the defendant; but if the said net proceeds be insufficient to satisfy the said value and interest, the defendant shall not be bound for the deficiency.—Rev., 664.

1122. If plaintiff is feme covert, minor or insane.—If the party by or for whom the land is claimed in the suit be a feme covert, minor, or insane, such value shall be deemed to be real estate, and be disposed of as the court may consider proper for the benefit of the persons interested therein.—Rev., 665.

1123. Defendant evicted, recovery of plaintiff.—If the defendant, his heirs or assigns, shall, after the premises are so relinquished to him, be evicted thereof by force of any better title than that of the original plaintiff, the person so evicted may recover from such plaintiff or his representatives the amount so paid for the premises, as so much money had and received by such plaintiff in his lifetime for the use of such person, with lawful interest thereon from the time of such payment.—Rev., 666.

CHAPTER XXX.

SUPPLEMENTAL PROCEEDINGS.

1124. Execution returned unsatisfied, order within three years for debtor to answer.—When an execution against property of the judgment debtor, or any one of several debtors in the same judgment, issued to the sheriff of the county where he resides or has a place of business, or if he do not reside in the state, to the sheriff of the county where a judgment roll or a transcript of a justice's judgment is filed, is returned unsatisfied, in whole or in part, the judgment creditor, at any time after such return made, and within three years from the time of issuing the execution, is entitled to an order from the court to which the execution is returned, or from the judge thereof, requiring such debtor to appear and answer concerning his property, before such court or judge, at a time and place specified in the order, within the county to which the execution was issued.—Rev., 667.

To authorize an order of examination in supplemental proceedings, it should be made to appear by affidavit or otherwise: (1) That there is a want of known property subject to execution, proved by the sheriff's return of "unsatisfied." (2) The non-existence of an equitable estate in land within the lien of the judgment. (3) The existence of property, choses in action and things of value, unaffected by any lien and incapable of levy.—*Hinsdale v. Sinclair*, 83—338.

No previous demand on debtor is required, neither is eight days notice to debtor necessary, before instituting supplementary proceedings. If affidavit is defective, it can be amended at the trial.—*Weiller v. Lawrence*, 81—65; *Hasty v. Simpson*, 77—69.

A sheriff may return an execution before the return term thereof if it be satisfied, or if no property can be found out of which to satisfy the same.—*Whitehead v. Hellen*, 74—679.

Supplemental proceedings may be instituted in the county where the judgment was rendered, but the place designated for the defendant to appear and answer must be in the county where the defendant resides.—*Hasty v. Simpson*, 77—69.

Supplemental proceedings may be commenced before the sale of the property levied upon, on affidavit or other proof of its insufficient value. But no final order can be made appropriating to the creditor any property discovered until the property previously levied on has been exhausted.—*McKeithan v. Walker*, 66—95.

The judgment creditor who first institutes supplemental proceedings is entitled to priority of lien thereunder, unless he lose such right by a failure to pursue his remedy with diligence.—*Parks v. Sprinkle*, 64—637.

1125. Execution not returned, order on affidavit; proceedings.—After the issuing of an execution against property, and upon proof by affidavit, of a party, his agent or attorney, to the satisfaction of the court, or a judge thereof, that any judgment debtor residing in the judicial district where such judge or officer resides has property which he unjustly refuses to apply toward the satisfaction of the judgment, such court or judge may, by an order, require the judgment debtor to appear at a specified time and place, to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor towards the satisfaction of the judgment as are provided upon the return of an execution, and the judgment creditor shall be entitled to the order of examination under this and under the preceding section, although the judgment debtor may have an equitable estate in land subject to the lien of the judgment, or may have choses in action, or other things of value unaffected by the lien of the judgment, and incapable of levy.—Rev., 668.

Note.—All after the words "return of an execution," in the preceding subsection, was added by the code commissioners in their revision, thereby dispensing with the requisite in an affidavit as prescribed in *Hinsdale v. Sinclair*, 83—338, to the extent mentioned in said addition. See citation under section 1124 infra.

The purpose of sections 488 and 490 of The Code is to give a remedy by "proceeding supplementary to the execution" to a plaintiff only in case the defendant has no known property liable to execution, or to what is in the nature of execution, proceedings to enforce a sale to satisfy the debt.—*McKeithan v. Walker*, 66..95.

1126. Proceedings against joint debtors.—Proceedings supplemental to execution may be taken upon the return of an execution unsatisfied, issued upon a judgment recovered in an action against joint debtors, in which some of the defendants have not been served with the summons by which said action was commenced, so far as relates to the

joint property of such debtors; and all actions by creditors to obtain satisfaction of judgments out of the property of joint debtors are maintainable in the like manner and to the like effect. These provisions shall apply to all proceedings and actions pending and to those terminated by final decree or judgment.—Rev., 669.

1127. Either party may examine witnesses.—On such examination either party may examine witnesses in his behalf, and the judgment debtor may be examined in the same manner as a witness; and witnesses may be required to appear and testify on any proceedings under this chapter in the same manner as upon the trial of an issue.—Rev., 670.

1128. Debtor leaving state, or concealing himself, arrested; held to bond.—Instead of the order requiring the attendance of the judgment debtor, the court or judge may, upon proof by affidavit or otherwise, to his satisfaction, that there is danger of the debtor leaving the state, or concealing himself, and that there is reason to believe that he has property which he unjustly refuses to apply to such judgment, issue a warrant requiring the sheriff of any county where such debtor may be, to arrest him and bring him before such court or judge. Upon being brought before the court or judge, he may be examined on oath, and, if it then appears that there is danger of the debtor leaving the state, and that he has property which he has unjustly refused to apply to such judgment, he shall be ordered to enter into an undertaking, with one or more sureties, that he will, from time to time, attend before the court or judge as he shall direct, and that he will not, during the pendency of the proceedings, dispose of any property not exempt from execution. In default of entering into such undertaking, he may be committed to prison by warrant of the court or judge, as for contempt.—Rev., 671.

1129. Incriminating answers, no privilege; not used in criminal prosecutions.—No person shall, on examination pursuant to this chapter, be excused from answering any question on the ground that his examination will tend to convict him of the commission of a crime; but his answer shall not be used as evidence against him in any criminal proceeding or prosecution. Nor shall he be excused from answering any question on the ground that he has, before the examination, executed any conveyance, assignment or transfer of his property for any purpose, but his answer shall not be used as evidence against him in any criminal proceeding or prosecution.—Rev., 672.

1130. Disposition of property forbidden.—The court or judge may, by order, forbid a transfer or other disposition of the property of the judgment debtor not exempt from execution, or any interference there-with.—Rev., 673.

1131. Debtors of judgment debtor may pay off execution.—After the issuing of execution against property, all persons indebted to the judgment debtor, or to any one of several debtors in the same judgment, may pay to the sheriff the amount of their debt, or so much thereof as shall be necessary to satisfy the execution; and the sheriff's receipt shall be a sufficient discharge for the amount so paid.—Rev., 674.

1132. Debtors, and persons having property, of judgment debtor, summoned.—After the issuing or return of an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, and upon affidavit that any person or corporation has property of said judgment debtor, or is indebted to him in an amount exceeding ten dollars, the court or judge may, by an order, require such person or corporation, or any officer or member thereof, to appear at a specified time and place, and answer concerning the same. The court or judge may also, in its or his discretion, require notice

of such proceeding to be given to any party to an action, in such manner as may seem to him or it proper.—Rev., 675.

A married woman who received a bond given for part of the purchase-money of her husband's land as in lieu of possible dower therein, may be compelled to surrender it for the use of a creditor proceeding under this chapter.—*Sutton v. Askew*, 66—172.

Where it appears, from an examination under supplemental proceedings, that the judgment debtor holds a claim against a third party, to be discharged by the delivery of corn at a stipulated price per bushel, a court can not order such person to deliver to the creditor a sufficient quantity of the corn at the agreed price to satisfy the debt. The proper order is to sell the corn and apply the proceeds to the debt.—*In re Davis*, 81—72.

1133. Party or witness examined under oath; certified; answer by corporation.—The party or witness may be required to attend before the court or judge, or before a referee appointed by the court or judge; if before a referee, the examination shall be taken by the referee, and certified to the court or judge. All examinations and answers before a court or judge or referee, under this chapter, shall be on oath, except that when a corporation answers, the answer shall be on the oath of the officer thereof.—Rev., 676.

1134. Where proceedings instituted and defendant examined.—Proceedings supplemental to execution must be instituted in the county in which the judgment was rendered; but the place designated where the defendant shall appear and answer must be within the county where such defendant resides.—Rev., 677.

1135. Debtor's property ordered sold; exceptions.—The court or judge may order any property, whether subject or not, to be sold under execution (except the homestead and personal property exemptions of the judgment debtor), in the hands either of himself or of any other person, so due to the judgment debtor, to be applied towards the satisfaction of the judgment; except that the earnings of the debtor for his personal services, at any time within sixty days next preceding the order, can not be so applied when it is made to appear, by the debtor's affidavit or otherwise, that such earnings are necessary for the use of a family supported wholly or in part by his labor.—Rev., 678.

A judgment creditor whose execution has been returned unsatisfied, can not maintain an action against an administrator to subject a distributive share of the judgment debtor in the estate; he must proceed by supplemental proceedings.—*Rand v. Rand*, 78—12.

1136. Receiver appointed; creditors notified.—The court or judge having jurisdiction over the appointment of receivers may also by order in like manner, and with like authority, appoint a receiver in proceedings under this chapter, of the property of the judgment debtor, whether subject or not to be sold under execution, except the homestead and personal property exemptions. But before the appointment of such receiver, the court or judge shall ascertain, if practicable, by the oath of the party or otherwise, whether any other supplementary proceedings are pending against the judgment debtor, and if such proceedings are so pending, the plaintiff therein shall have notice to appear before him, and shall likewise have notice of all subsequent proceedings in relation to said receivership. No more than one receiver of the property of a judgment debtor shall be appointed. The title of the receiver shall relate back to the service of the restraining order, hereinbefore and hereinafter provided for.—Rev., 679.

Note.—For statutes regulating receivers, see ss.

1137. Order of appointment filed and recorded; property vests when; receiver under control of court.—Whenever the court or a judge shall grant an order for the appointment of a receiver of the property of the judgment debtor, the same shall be filed in the office of the clerk of the superior court of the county where the judgment roll in the action or transcript from justice's judgment, upon which the proceedings are taken, is filed; and the clerk shall record the order in a book to be kept for that purpose in his office, to be called "book of orders, appointing receivers of judgment debtors," and shall note the time of

the filing of said order therein. A certified copy of said order shall be delivered to the receiver named therein, and he shall be vested with the property and effects of the judgment debtor from the time of the service of the restraining order, if such restraining order shall have been made, and if not, from the time of the filing and recording of the order for the appointment of a receiver. The receiver of the judgment debtor shall be subject to the direction and control of the court in which the judgment was obtained upon which the proceedings are founded.—Rev., 680.

1138. Order of appointment recorded in county in which land lies and debtor resides.—But before the receiver shall be vested with any real property of such judgment debtor, a certified copy of said order shall also be filed and recorded on the execution docket, in the office of the clerk of the superior court of the county in which any real estate of such judgment debtor sought to be affected by such order is situated, and also in the office of the clerk of the superior court of the county in which such judgment debtor resides.—Rev., 681.

1139. Receiver to sue, debt denied, property claimed adversely; disposition forbidden.—If it appear that a person or corporation alleged to have property of the judgment debtor, or indebted to him, claims an interest in the property adverse to him, or denies the debt, such interest or debt shall be recoverable only in an action against such person or corporation by the receiver; but the court or judge may, by order, forbid a transfer or other disposition of such property or interest, till a sufficient opportunity be given to the receiver to commence the action, and prosecute the same to judgment and execution, but such order may be modified or dissolved by the court or judge having jurisdiction, at any time, on such security as he shall direct.—Rev., 682.

1140. Reference, when.—The court or judge may, in his discretion, order a reference to a referee agreed upon by the parties, or appointed by him, to report the evidence or the facts, and may, in his discretion, appoint such referee in the first order, or at any time.—Rev., 683.

1141. Disobedience of orders, contempt; punishment.—If any person, party or witness, disobey an order of the court or judge or referee, duly served, such person, party or witness may be punished by the judge as for contempt. And in all cases of commitment under this subchapter, the person committed may, in case of inability to perform the act required, or to endure the imprisonment, be discharged from imprisonment by the judge committing him, or the judge having jurisdiction, on such terms as may be just.—Rev., 684.

CHAPTER XXXI.

PROPERTY EXEMPT FROM EXECUTION.

1142. When debt contracted or cause of action arose.—There shall be exempt from sale under execution or other final process issued for the collection of any debt upon all judgments heretofore, or which may be hereafter rendered, such property as the judgment debtor may have been entitled to have set apart and allotted to him at the time the debt was contracted, or cause of action accrued, as follows:

Upon debts contracted prior to February twenty-fifth, one thousand eight hundred and sixty seven.

The wearing apparel, working tools, arms for muster, one wheel and two pairs of cards, one loom, one Bible and Testament, one hymn-book, one prayer-book, and all necessary school books, the property of the

defendant, shall be exempt from seizure under execution, and in addition to the foregoing articles there shall be, in favor of every housekeeper complying with this chapter, exempt from execution on debts contracted since the first day of July, one thousand eight hundred and forty-five, and prior to February twenty-fifth, one thousand eight hundred and sixty-seven, the following property, provided the same shall have been set apart before seizure, to-wit: One cow and calf, ten bushels of corn or wheat, fifty pounds of bacon, beef or pork, or one barrel of fish, all necessary farming tools for one laborer, one bed, bedstead and covering for every two members of the family, and such other property as the freeholders appointed for that purpose may deem necessary for the comfort and support of such debtor's family; such other property not to exceed in value the sum of fifty dollars at cash valuation: Provided, that this section shall not be extended to any person against whom judgment is obtained and execution awarded for liability incurred for failure or neglect to work on the public roads, or to muster, or pay his poll tax.

Debts contracted since February twenty-fifth, one thousand eight hundred and sixty-seven, and prior to April twenty-fourth, one thousand eight hundred and sixty-eight.

The wearing apparel, working tools, arms for muster, one wheel and two pairs of cards, one loom, one Bible and Testament, one hymn-book, one prayer-book, and all necessary school books, the property of the defendant, shall be exempt from seizure under execution. And the following property of each head of a family or housekeeper shall be exempt from execution except for taxes: All necessary farming and mechanical tools, one work horse, one yoke of oxen, one cart or wagon, one milch cow and calf, fifteen head of hogs, five hundred pounds of pork or bacon, fifty bushels of corn, twenty bushels of wheat or rice, household and kitchen furniture not to exceed in value two hundred dollars, the libraries of licensed attorneys at law, practicing physicians and ministers of the gospel, and instruments of surgeons and dentists used in their professions: Provided, that the value of the personal property exemptions shall not exceed five hundred dollars.

Upon debts contracted and causes of actions accrued since April the twenty-fourth, one thousand eight hundred and sixty-eight, and prior to May first, one thousand eight hundred and seventy-seven.

The property, real and personal, as set forth in article ten of the constitution of the state.

Upon debts contracted or causes of action accruing since May first, one thousand eight hundred and seventy-seven.

The property, real and personal, specified in the third subdivision of this section, and the homestead of any resident of this state shall not be subject to sale under execution or other process thereon, except such as may be rendered or issued to secure the payment of obligations contracted for the purchase of the said real estate, or for laborers' or mechanics' liens, for work done and performed for the claimant of said homestead, or for lawful taxes: Provided, that the allotment of the homestead shall, as to all property therein embraced, suspend the running of the statute of limitations on all judgments against the homesteader during the continuance of the homestead: Provided further, that the owners of judgments docketed since March eleventh, one thousand eight hundred and eighty-five, shall have two years from first day of April, one thousand nine hundred and one, within which to assign and set apart the homesteads under such judgments, the suspension of the statute of limitations shall be suspended not only as to the judgment under which the homestead is allotted, but as to all other judgments.—Rev., 685.

The homestead and personal property exemptions are fixed by the constitution, and neither the value nor duration thereof can be increased or diminished by the legislature,

therefore the act of May 1, 1877, in so far as it undertakes the same, is unconstitutional.—*Wharton v. Taylor*, 88—230.

The homestead right is not affected by a lien for materials furnished and used in improvements upon land covered by homestead, and the act of assembly in so far as it gives such lien is unconstitutional.—*Cummings v. Bloodworth*, 87—83.

Executors and administrators, on a judgment against them for devastavit, are only entitled to the exemptions in force at the date of their qualification or giving bond.—*Leach v. Jones*, 86—404.

The income arising from a homestead is not exempt from execution.—*Bank v. Green*, 73—247.

A homestead can not be taken in a homestead remainder dependent on a life estate—the present right of occupancy is necessary to constitute a homestead.—*Murchison v. Plyler*, 87—79.

Upon the death of a man seized in fee of land, leaving a widow and minor children, without having a homestead laid off, the double rights of dower and homestead do not attach together, but dower having been assigned to the widow, the children are only entitled to a homestead sub modo, that is a present interest, the enjoyment of which is postponed until after the death of the doweress.—*Watts v. Leggett*, 66—197.

It seems that where lands are encumbered with prior trust debts, it is the duty of the appraisers, in laying off a homestead under execution on a judgment, to assign the homestead in the lands without reference to the encumbrance.—*Burton v. Spiers*, 87—87.

The personal property of a resident debtor to the value of \$500 is exempt from any and all process for the collection or enforcement of payment of debt, and such right to the exemption exists, not by virtue of the allotment, but by virtue of the constitution, which confers and attaches the protection to the debtor before the allotment or appraisal.—*Lockheart v. Bear*, 117—298.

One partner is not entitled to his exemption from an execution on a judgment against the partnership without the consent of his co-partners. Nor are surviving partners entitled to exemption from execution on a judgment against the partnership without the consent of the administrator of the deceased partner.—*Richardson v. Redd*, 118—677.

The homestead can be claimed against a debt contracted by the owner for materials furnished for improvements on the land constituting such homestead.—*Cummings v. Bloodworth*, 87—83.

1143. Conveyed homestead not exempt, when.—The allotted homestead shall be exempt from levy so long as owned and occupied by the homesteader or by any one for him, but when conveyed by him in the mode authorized by the constitution, article ten, section eight, the exemption thereof ceases as to liens attaching prior to the conveyance. The homestead right being indestructible, the homesteader who has conveyed his allotted homestead can have another allotted, and as often as may be necessary: Provided, this shall not have any retroactive effect.—*Rev.*, 686.

1144. Sheriff to summon and swear appraisers; surveyor, when.—Before levying upon the real estate of any resident of this state who is entitled to a homestead under this chapter and the constitution of this state, article ten, the sheriff or other officer charged with such levy, shall summon three discreet persons qualified to act as jurors, to whom he shall administer the following oath: "I, A. B., do solemnly swear (or affirm) that I have no interest, near or remote, in the homestead exemption of C. D., and that I will faithfully perform the duties of appraiser (or assessor, as the case may be), in valuing and laying off the same. So help me, God." Provided, that in cases where he shall deem it necessary he may summon the county surveyor or some other competent surveyor to assist in laying off the homestead by metes and bounds.—*Rev.*, 687.

Note.—For allotment where land is held in common, see s. 2946.

It is not required that appraisers shall be freeholders.—*Hale v. Whitehead*, 115—28.

1145. Duty of appraisers.—The said appraisers shall thereupon proceed to value the homestead with its dwelling and buildings thereon, and lay off to said owner such portion as he may select, or to any agent, attorney, or other person in his behalf, not exceeding in value one thousand dollars, and to fix and describe the same by metes and bounds.—*Rev.*, 688.

Allotment is illegal if debtor is not given the opportunity to be present and make his selection.—*McGowan v. McGowan*, 122—164.

Method of procedure in allotting homestead suggested.—*Burton v. Spiers*, 87—87.

1146. Return of appraisers; filed and registered; copy to county of execution; original or copy evidence.—They shall then make and sign

in the presence of the officer a return of their proceedings, setting forth the property exempted, which shall be returned by the officer to the clerk of the court for the county in which the homestead is situated and filed with the judgment roll in the action, and a minute of the same entered on the judgment docket, and a certified copy thereof under the hand of the clerk shall be registered in the office of the register of deeds for the county, and said officer shall likewise make a transcript of said return over his hand and return the same without delay to the clerk of the court of the county from whence the execution issued, and said clerk shall likewise file and make minute of the same as above directed, and in all judicial proceedings the original return or a certified copy thereof may be read in evidence.—Rev., 689.

1147. Liability of officer or appraiser conspiring.—Any officer, appraiser, or assessor who shall wilfully or corruptly conspire with any judgment debtor, judgment creditor, or other person, to undervalue, or to overvalue, the homestead or personal property exemption of any debtor, or shall assign false metes and bounds, or shall make or procure to be made a false and fraudulent return thereof, shall be answerable in a civil action to the party injured thereby for all costs and damages.—Rev., 690.

Note.—For criminal liability, see ss. 3584 and 3586 of Revisal.

1148. Re-allotment for increase of value; appeal; statute not exclusive.—Any judgment creditor of a debtor whose homestead has been allotted may apply in writing to the clerk of the superior court of the county in which such homestead lies for an order for the re-allotment of said homestead, if there be in the hands of the sheriff of that county an execution issued from the proper court against said debtor. Such application shall be accompanied by the affidavits of three disinterested freeholders of the county in which said homestead lies, setting forth that, in their opinion, said homestead has increased in value fifty per centum or more since the last allotment thereof. Upon the filing of said application and affidavit the clerk shall issue notice to the judgment debtor to appear before him on a day not more than five days from the day of the service of said notice and show cause why said homestead shall not be re-allotted. Said notice shall state upon whose application the notice is issued. Upon the return day of said notice the said clerk shall consider the affidavit filed, as heretofore required, and such additional affidavits as may be filed by either party, and if, after hearing and considering the same, he is of opinion that the said homestead has probably appreciated in value fifty per centum or more since the last allotment, he shall command the sheriff to allot to the judgment debtor his homestead in the same manner as if no homestead had been allotted. And if upon such allotment any excess is found, it shall be disposed of by the sheriff as in ordinary cases of execution and levy. From the order of the clerk commanding a re-allotment, or refusing the same, either party may appeal to the judge holding the court of the district, or to the judge of the district, either of whom shall hear the same in chambers in any county of the judicial district to which the county in which the proceedings were instituted belongs. And in all other respects the proceedings upon such appeal shall be as now provided by law for appeals from the clerk on issues of law. This section shall not be construed to prevent the judgment creditor from resorting to the equity jurisdiction of the courts for a re-allotment of the homestead of his judgment debtor in any case.—Rev., 691.

Note.—For costs, see s. 1268 of Revisal.

1149. Levy on excess; return of officer.—The levy may be made upon the excess of the homestead, not laid off according to this chapter, and the officer shall make substantially the following return upon the execution: "A. B., C. D., and E. F., summoned and qualified as ap-

praisers or assessors(as the case may be) who set off to X. Y. the homestead exempt by law. Levy made upon the excess."—Rev., 692.

Sale is void if made without first laying off homestead.—*Fulton v. Roberts*, 113—421; *Ferguson v. Wright*, 113—537.

1150. When no election by owner, appraisers elect.—In case no election is made by the owner, his agent, attorney, or any one acting in his behalf, of the homestead, to be laid off as exempt, the appraisers shall make such election for him, including always the dwelling and buildings used therewith.—Rev., 693.

1151. Tracts not contiguous included, when.—Different tracts or parcels of land not contiguous may be included in the same homestead, when a homestead of contiguous land is not of the value of one thousand dollars.—Rev., 694.

The owner is not restricted to the tract on which he resides, nor to contiguous tracts, in the selection of a homestead.—*Fulton v. Roberts*, 113—421.

1152. Personal property not to exceed \$500 appraised on demand; manner; return.—Whenever the personal property of any resident of this state shall be levied upon by virtue of any execution or other final process issued for the collection of any debt, and the owner or any agent or attorney in his behalf, shall demand that the same, or any part thereof, shall be exempt from sale under such execution, the sheriff or other officer making such levy shall summon three appraisers, as heretofore provided, who, having been first duly sworn, shall appraise and lay off to the judgment debtor such articles of personal property as he or another in his behalf may select, and to which he may be entitled under this chapter and the constitution of the state, in no case to exceed in value five hundred dollars, which articles shall be exempt from said levy, and return thereof shall be made by the appraisers, as upon the laying off of a homestead exemption.—Rev., 695.

1153. Appraiser's oath and fees.—The persons summoned to appraise the personal property exemption shall take the same oath and be entitled to the same fees as the appraisers of the homestead, and when both exemptions are claimed by the judgment debtor, at the same time, one board of appraisers shall lay off both and be entitled to but one fee.—Rev., 696.

1154. Appraisers to set apart selected property; return to register of deeds.—Said assessors shall set apart of the personal property of said applicant, to be by him selected, articles of personalty to which he may be entitled under this chapter, not exceeding in value the sum of five hundred dollars, and make and sign a descriptive list thereof, and return the same to the register of deeds.—Rev., 697.

1155. Return registered.—It shall be the duty of the register of deeds to endorse on each of said returns the date when received for registration, and to cause the same to be registered without unnecessary delay. The said register shall receive for registering the said returns the same fees that may be allowed him by law for other similar or equivalent services, which fees shall be paid by said resident applicant, his agent or attorney, upon the reception of said returns by the register.—Rev., 698.

1156. Exceptions to valuation and allotment; procedure.—If the judgment creditor for whom levy is made, or judgment debtor or other person entitled to homestead and personal property exemption, shall be dissatisfied with the valuation and allotment of the appraisers or assessors (as the case may be) he, within ten days thereafter, or any other creditor, within six months, and before sale under execution of the excess, may notify the adverse party and the sheriff having the execution in hand, and file with the clerk of the superior court of the county where the said allotment shall be made a transcript of the return of the appraisers or assessors (as the case may be) which they or the

sheriff shall allow to be made upon demand, together with his objections in writing to said return; and thereupon the said clerk shall put the same on the civil issue docket of said superior court for trial at the next term thereof as other civil actions, and such issue joined shall have precedence over all other issues at such term. And the sheriff shall not sell the excess until after the determination of said action: Provided, that the ten days and six months respectively shall begin to run from the date of the filing of the return of the valuation and allotment of the appraisers or assessors by the officer with the clerk of the superior court of the county from whence the execution issued.—Rev., 699.

1157. When increase demanded; what jury shall find; commissioners appointed by court; report.—When an increase of the exemption or an allotment in property other than that set apart shall be demanded, the party demanding shall in his exceptions specify the property from which the increase or re-allotment is to be had. If the appraisal or assessment shall be reduced, the jury shall assess the value of the property embraced therein; if increased, the value of the property specified in the objections from which the increase is demanded shall also be assessed; but if the allotment shall be made in property other than that first set apart, the jury shall assess the value of the property so allotted. The court shall appoint three disinterested commissioners to lay off and set apart the homestead and personal property exemption in accordance with the verdict of the jury and the judgment of the court, and in the manner prescribed by law. The commissioners, who shall be summoned by the sheriff, shall meet upon the premises and after being sworn by the sheriff or a justice of the peace to faithfully perform the duties of appraisers or assessors (as the case may be) in allotting and laying off the homestead and personal property exemption, or both (as the case may be), in accordance with the verdict and judgment aforesaid, allot and lay off the same and file their report to the next term of the court, when the same shall be heard by the court upon exceptions thereto.—Rev., 700.

1158. Undertaking of objector.—The creditor, debtor, or claimant objecting to the allotment made by the appraisers or assessors (as the case may be) under execution or petition, shall file with the clerk of the superior court an undertaking in the sum of one hundred dollars for the payment to the adverse party of such costs as shall be adjudged against him.—Rev., 701.

1159. Set aside for fraud, complicity or irregularity.—Any appraisal or allotment by appraisers or assessors, hereinbefore provided, may be set aside for fraud, complicity or other irregularity, but whenever any allotment or assessment shall be made or confirmed by the superior court at term time, as hereinbefore provided, the said homestead shall not thereafter be set aside or again laid off by any other creditor except for increase in value.—Rev., 702.

1160. Return registered; original or copy evidence.—When the homestead and personal property exemption shall be decided by the court at term time the clerk of the superior court shall immediately file with the register of deeds of the county a copy of the same, which copy shall be registered as deeds are now registered by law; and in all judicial proceedings the original or a certified copy of said return may be introduced in evidence.—Rev., 703.

1161. Allotted upon petition of owner.—Whenever any resident of this state may desire to take the benefit of the homestead and personal property exemption as guaranteed by article ten of the constitution of this state, or by this chapter, such resident, his agent or attorney, shall apply to any justice of the peace of the county in which he resides, and said justice of the peace shall appoint as assessors three

disinterested persons, qualified to act as jurors, residing in said county, who shall, on notice by order of said justice, meet at the applicant's residence, and, after taking the oath prescribed for appraisers before some officer authorized to administer an oath, lay off and allot to the applicant a homestead with metes and bounds, according to the applicant's direction, not to exceed one thousand dollars in value, and make and sign a descriptive account of the same and return it to the office of the register of deeds.—Rev., 704.

The docketing of judgments against a debtor who holds land in remainder, dependent upon a life estate in another, creates a lien upon such estate, which, not being susceptible of immediate occupancy, is not protected from sale under execution by the constitution and laws relating to homestead exemptions.—*Stern v. Lee*, 115—426.

The homestead right, being a right vested by the constitution, can not be destroyed by any irregularity in the proceedings for its allotment.—*Formeyduval v. Rockwell*, 117—320.

1162. Advertisement of petition; time of hearing.—When any person entitled to a homestead and personal property exemption shall file his or her petition before a justice of the peace to have the same laid off and set apart under the preceding sections, the said justice shall make advertisement in some newspaper published in the county, if there be one, for six successive weeks, and if there be no newspaper in the county, then at the court-house door of the county in which the petition is filed, notifying all creditors of said applicant of the time and place, when and where the said petition will be heard; and the same shall not be heard nor any decree made in the cause in less than six months nor more than twelve months from the day of making advertisement as above required.—Rev., 705.

1163. Exceptions, when allotted on petition.—When the homestead or personal property exemption is made or allotted on the petition of the person entitled thereto, any creditor may, within six months from the time of said assessment or appraisal, and upon ten days' notice to the petitioner, file his objections with the register of deeds of the county in which the premises are situated, and the register of deeds shall return the same to the clerk of the superior court of said county, who shall place the same on the civil issue docket, and the same shall be tried as provided in section six hundred and ninety-nine for homestead and personal property exemptions set off under execution.—Rev., 706.

A mortgage of land by one indebted at the time bars any homestead right therein without the joinder and privy examination of the wife, if the homestead had not been allotted and there were no docketed judgments upon which homestead could be allotted.—*Dixon v. Roberts*, 114—102.

1164. Allotted after death of homesteader.—If any person entitled to a homestead exemption die without such homestead having been set apart, his widow, if he leave no children, or his child or children under the age of twenty-one years, if he leave such, may proceed to have said homestead exemption laid off by petition, and if such widow, child or children, being entitled to a homestead exemption as aforesaid, shall have failed to have the same set apart in the manner hereinbefore provided, then, and in such event, it shall be the duty, in an action brought by the personal representative of such decedent to subject the realty of his testator or intestate to the payment of debts and charges of administration, of the court to appoint three disinterested freeholders to set apart to such widow, child or children entitled to a homestead exemption, as aforesaid, a homestead exemption under metes and bounds in the lands of such decedent, who shall under their hands and seals make return of the same to the court, which shall be registered in the same manner as is now required by law for the registration of homestead exemptions.—Rev., 707.

1165. Liability of officer failing to allot.—Any officer making a levy, who shall refuse or neglect to summon and qualify appraisers as heretofore provided, or who shall fail to make due return of his proceedings, or who shall levy upon the homestead set off by said apprais-

ers or assessors (as the case may be), except as herein provided, he and his sureties shall be liable to the owner of said homestead for all costs and damages in a civil action.—Rev., 708.

Note.—For additional penalty making misdemeanor, see s. 3584 of Revisal.

CHAPTER XXXII.

SPECIAL PROCEEDINGS.

1166. This chapter applicable to.—The provisions of this chapter on civil procedure are applicable to special proceedings, except as otherwise provided.—Rev., 710.

Note.—See s. 348 of Revisal.

1167. How commenced.—When special proceedings are had against adverse parties, they shall be commenced as is prescribed for civil actions.—Rev., 711.

Note.—See s. 718 of Revisal.

1168. Summons in; what to contain.—The summons in special proceedings shall command the officer to summon the defendant to appear at the office of the clerk of the superior court on a day named in the summons, to answer the complaint or petition of the plaintiff. The number of days within which the defendant is summoned to appear shall in no case be less than ten exclusive of the day of service.—Rev., 712.

1169. Return of summons.—The officer to whom the summons is addressed shall note on it the day of its delivery to him; if required by the plaintiff, he shall execute the same immediately. When executed, he shall immediately return the summons with the date and manner of its execution, by mail or otherwise, to the clerk of the court issuing it.—Rev., 713.

1170. Complaint filed, when.—It shall be sufficient for the plaintiff to file his complaint or petition with the clerk of the court to which the summons is returnable, at the time of issuing the summons, or within ten days thereafter.—Rev., 714.

1171. Nonsuit for failure to file in time.—If the plaintiff shall fail to file his complaint or petition within the time limited by the summons for the appearance and answer of the defendant, the defendant shall be entitled to demand judgment of nonsuit against the plaintiff.—Rev., 715.

1172. Time enlarged.—The time for filing the complaint, petition, or any pleading whatever, may be enlarged by the court for good cause shown by affidavit, but it shall not be enlarged by more than ten additional days, nor more than once, unless the default shall have been occasioned by accident over which the party applying had no control, or by the fraud of the opposing party.—Rev., 716.

1173. Equitable defenses pleaded; transferred to civil issue docket; amendments.—In special proceedings which have been, or may hereafter be begun, it shall be competent for any defendant or other party thereto to plead any equitable or other defense, or ask any equitable or other relief in the pleadings which it would be competent to ask in a civil action; and when such pleas are filed the clerk shall transfer the cause to the civil issue docket for trial during term upon all issues raised by the pleadings. It shall be competent for the trial judge to allow amendments to the pleadings and interpleas in behalf of any person claiming an interest in the property, with a view to substantial justice between the parties.—Rev., 717.

1174. Ex parte; begun by petition.—If all the parties in interest join in the proceeding and ask the same relief, the commencement of the proceedings shall be by petition, setting forth the facts entitling the petitioners to relief, and the nature of the relief demanded.—Rev., 718.

1175. Clerk hears summarily; attorney must file authority from non-resident.—In such cases, if all persons to be affected by the decree, or their attorney, shall have signed the petition, and they be of full age, the clerk of the superior court shall have power to hear the petition summarily, and to decide the same. If either or any of the petitioners shall be residing out of the state, an authority from him or them, to the attorney, in writing, must be filed with the clerk before he shall make any order or decree to prejudice their rights.—Rev., 719.

1176. Judge approves when infants are petitioners.—If any of the petitioners be an infant, or the guardian of an infant, acting for him, no final order or judgment of the clerk affecting the merits of the case, and capable of being prejudicial to the infant, shall be valid, unless submitted to and approved by the judge resident in the district or the judge holding court therein.—Rev., 720.

The cases to be submitted to the judge of the superior court by the clerk are those only where the proceedings are ex parte.—Stafford v. Harris, 72—189.

1177. Ex parte proceedings validated.—Any approval made prior to the tenth day of February, one thousand eight hundred and eighty-seven, of any sale of the land of any infant in any ex parte proceeding, wherein such infant has appeared by his or her guardian, by a judge of the district or a judge holding court therein, is hereby confirmed, as far as regards the jurisdiction of the judge approving such proceedings.—Rev., 721.

1178. Orders signed by judge.—Every order or judgment in a special proceeding, which is required to be made by a judge of the superior court, either in or out of term, shall be authenticated by his signature.—Rev., 722.

1179. Reports of commissioners and jurors; confirmed, when.—Every order or judgment in a special proceeding imposing any duty on commissioners or jurors shall prescribe the time within which such duty shall be performed, except in cases where the time is prescribed by statute. The commissioners or jurors shall, within twenty days after the performance of such duty, file their report with the clerk of the superior court; and if no exception is filed to such report within twenty days, the court may proceed to confirm the same on motion of any party and without special notice to the other parties.—Rev., 723.

1180. No report set aside for trivial defect.—No report or return made by any commissioners shall be set aside and sent back to them or others for a new report by reason of any defect or omission not affecting the substantial rights of the parties, but such defect or omission may be amended by the court, or by the commissioners, by permission of the court.—Rev., 724.

1181. Commissioners to sell to settle in sixty days.—In all actions or special proceedings when any person shall be appointed commissioner to sell any real or personal property, he shall, within sixty days after the maturity of the note or bond for the balance of the purchase money of said real or personal property, or the payment of the amount of the bid, when the sale is for cash, file with the clerk of the superior court a final account of his receipts and disbursements on account of said sale; and the clerk shall audit said account and record it in the book in which the final settlements of executors and administrators are recorded.—Rev., 725.

CHAPTER XXXIII.

ARREST AND BAIL.

1182. Arrested only as herein prescribed.—No person shall be arrested in a civil action, except as prescribed by this chapter; but this provision shall not apply to proceedings for contempt.—Rev., 726.

1183. In what cases.—The defendant may be arrested, as herein-after prescribed, in the following cases:

(1) In an action for the recovery of damages, on a cause of action not arising out of contract, where the defendant is not a resident of the state, or is about to remove therefrom, or where the action is for an injury to person or character, or for injuring, or for wrongfully taking, detaining or converting property real or personal.

An affidavit that the defendant is "about to leave the state," is insufficient as a basis for a warrant of arrest; it ought to have added "with intent to defraud his creditors, as affiant believes"; and then set forth the ground of such belief, so as to show some probable cause. Refusal to allow a second affidavit to be filed is an act of discretion, which can not be reviewed upon appeal. The plaintiff might have filed a second sufficient affidavit immediately, and obtained a second warrant of arrest.—*Wilson v. Barnhill*, 64—121.

Where affidavit to obtain an order of arrest and an attachment is based upon an apprehension by the affiant of some future fraudulent act by the defendant, such affidavit must specify the grounds of the apprehension; but where the affidavit relies upon an act already done, it need state it only in general terms, as "that the defendant has disposed of and secreted his property with intent to defraud his creditors."—*Hughes v. Person*, 63—548; *Harris v. Sneed*, 101—273; *Tucker v. Wilkins*, 105—272.

The constitutional prohibition against imprisonment for debt does not protect from an arrest under this section in actions for torts.—*Moore v. Green*, 73—394.

The seduction of a daughter being an infringement of the father's relative rights of person, is an injury to his person within the meaning of this section of The Code, and a sufficient ground for the arrest of the defendant in an action for such tort.—*Hoover v. Palmer*, 80—313; *Hood v. Sudderth*, 111—215.

(2) In an action for a fine or penalty, or for seduction, or for money received, or for property embezzled or fraudulently misapplied by a public officer, or by an attorney, solicitor or counsellor, or by an officer or agent of a corporation or banking association, in the course of his employment as such, or by any factor, agent, broker or other person in a fiduciary capacity, or for any misconduct or neglect in office, or in a professional employment.

(3) In an action to recover the possession of personal property, unjustly detained, where the property, or any part thereof, has been concealed, removed or disposed of, so that it can not be found or taken by the sheriff, and with the intent that it should not be so found or taken, or with the intent to deprive the plaintiff of the benefit thereof.

(4) When the defendant has been guilty of a fraud in contracting the debt, or incurring the obligation for which the action is brought, or in concealing or disposing of the property for the taking, detention or conversion of which the action is brought, or when the action is brought to recover damages for fraud or deceit.

In an action for arrest and bail, the plaintiff alleged in substance that the defendant had sold him a certain patent right, representing the same to be genuine and no infringement upon any prior patent, which representations were false and intended to deceive plaintiff; that he had been damaged to the amount of the purchase money paid to defendant, and that defendant was a non-resident: Held, that the order of arrest was properly issued.—*Bahnsen v. Cheesebro*, 77—325.

A non-resident may be arrested for fraud under this subsection.—*Powers v. Davenport*, 101—286.

(5) When the defendant has removed, or disposed of, his property, or is about to do so, with intent to defraud his creditors.

But no woman shall be arrested in any action, except for a wilful injury to person, character or property; and no person shall be arrested on Sunday.

In an action for arrest and bail, the affidavit of the plaintiff alleged the existence of a cause of action and the fraud committed by defendant in contracting the debt, and that upon information and belief they had fraudulently removed and disposed of their property: Held, to be sufficient to justify order of arrest.—*Page v. Price*, 78—10.

One who fraudulently conveyed property held by him as trustee can be arrested under this section. So can one who fraudulently conveys his real estate with intent to defeat his creditors.—*Fertilizer Co. v. Little*, 118—808.

Arrest is illegal if made on Sunday.—*White v. Morris*, 107—92.

1184. Who issues order.—An order for the arrest of the defendant must be obtained from the court in which the action is brought, or from a judge thereof.—*Rev.*, 728.

1185. Order obtained on affidavit.—The order may be made where it shall appear to the court or judge thereof, by the affidavit of the plaintiff or of any other person, that a sufficient cause of action exists, and that the case is one of those provided for in this subchapter.—*Rev.*, 729.

The validity of an order of arrest and warrant of attachment is determined upon facts alleged in the original affidavit and existing at the time when the proceeding is instituted, and not upon new matter which may have afterwards transpired.—*Devries v. Summitt*, 86—126.

1186. Undertaking before order.—Before making the order the court or judge shall require a written undertaking on the part of the plaintiff, with sufficient surety, payable to the defendant, to the effect that if the defendant recover judgment the plaintiff will pay all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least one hundred dollars.—*Rev.*, 730.

A plaintiff who is allowed to sue in forma pauperis has no right to an order of arrest without filing the undertaking required in above section.—*Rowark v. Homesley*, 68—91.

1187. Time when order may issue; form.—The order may be made to accompany the summons, or to issue at any time afterwards, before judgment. It shall require the sheriff of the county where the defendant may be found forthwith to arrest him and hold him to bail in a specified sum, and to return the order at a place and time therein mentioned to the clerk of the court in which the action is brought, and notice of such return shall be served on the plaintiff or his attorney as prescribed by law for the service of other notices.—*Rev.*, 731.

An order of arrest issued after final judgment is illegal and void.—*Houston v. Walsh*, 76—35.

1188. Copy of affidavit and order to defendant.—The affidavit and order of arrest shall be delivered to the sheriff, who, upon arresting the defendant, shall deliver him a copy thereof.—*Rev.*, 732.

1189. Order, how executed.—The sheriff shall execute the order by arresting the defendant and keeping him in custody until discharged by law; and may call the power of the county to his aid in the execution of the arrest.—*Rev.*, 733.

1190. Vacated unless served before judgment; time to move to vacate.—The order of arrest shall be of no avail, and shall be vacated or set aside on motion, unless the same is served upon the defendant, as provided by law, before the docketing of any judgment in the action.—*Rev.*, 734.

1191. Motion by defendant to vacate order; jury trial, when.—A defendant arrested may at any time before judgment apply on motion to vacate the order of arrest or to reduce the amount of bail. And he may deny upon oath the facts alleged in the affidavit of the plaintiff on which the order of arrest was granted, and demand that the issue so raised by the plaintiff's affidavit and the defendant's denial be submitted to the jury and tried in the same manner as other issues are tried by a jury; and if the issues are found by the jury in favor of the defendant, judgment shall be rendered discharging the defendant from arrest and vacating the order of arrest, and the defendant shall recover of the plaintiff all costs of the proceeding in such arrest as he shall have incurred in defending the said action.—*Rev.*, 735.

Motion must be made before judgment. If once refused, can not be renewed.—*Roulhac v. Brown*, 87—1.

Unless upon affidavits showing changed state of facts.—*Ashby v. Page*, 108—6.

Appeal from judgment of magistrate discharging defendant vacates the judgment and continues order of arrest in force pending the appeal.—*Patton v. Gash*, 99—280.

1192. Counter affidavits by plaintiff, when.—If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits, or other proof, in addition to those on which the order of arrest was made.—*Rev.*, 736.

A refusal to allow a second affidavit to be filed is an exercise of discretion which can not be reviewed upon appeal. The plaintiff may file a second sufficient affidavit immediately and obtain a second warrant of arrest.—*Wilson v. Barnhill*, 64—121.

1193. How defendant discharged.—The defendant, at any time before execution, shall be discharged from the arrest, either upon giving bail or upon depositing the amount mentioned in the order of arrest, as provided in this chapter.—*Rev.*, 737.

1194. Defendant's undertaking.—The defendant may give bail by causing a written undertaking, payable to the plaintiff, to be executed by sufficient surety to the effect that the defendant shall at all times render himself amenable to the process of the court, during the pendency of the action, and to such as may be issued to enforce the judgment therein, or if he be arrested for the cause mentioned in the third subdivision of section seven hundred and twenty-seven, an undertaking to the same effect as that provided by law to be given by defendant for the retention of property, under subchapter entitled Claim and Delivery.—*Rev.*, 738.

A bail bond should show on its face that the surety is a resident and freeholder within the state, or his justification should establish these facts.—*Howell v. Jones*, 113—429.

1195. Defendant's undertaking delivered to clerk; plaintiff's exceptions.—Within the time limited for that purpose, the sheriff shall deliver the order of arrest to the clerk of the court in which the suit is brought, with his return endorsed, and a certified copy of the undertaking of the bail, and notify the plaintiff or his attorney thereof. The plaintiff, within ten days thereafter, may serve upon the sheriff a notice that he does not accept the bail, or he shall be deemed to have accepted it, and the sheriff shall be exonerated from the liability.—*Rev.*, 739.

1196. Qualification of bail.—The qualifications of bail must be as follows:

1. Each of them must be a resident and freeholder within the state.
2. They must each be worth the amount specified in the order of arrest, exclusive of property exempt from execution; but the judge, on justification, may allow more than two bail to justify severally in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.—*Rev.*, 740.

1197. Notice of justification; new bail.—On the receipt of such notice, the sheriff or defendant may, within ten days thereafter, give to the plaintiff, or his attorney, notice of the justification of the same or other bail (specifying the places of residence and occupation of the latter) before the court, justice of the peace, or judge, at a specified time and place, the time to be not less than five nor more than ten days thereafter. In case other bail be given, there shall be a new undertaking, in the form hereinbefore prescribed.—*Rev.*, 741.

Sheriff failing to give notice, although acting bona fide, is himself liable to the plaintiff as special bail.—*Howell v. Jones*, 113—429.

1198. Justification of bail.—For the purpose of justification, each of the bail shall attend before the court or judge, or a justice of the peace, at the time and place mentioned in the notice, and may be examined on oath, on the part of the plaintiff, touching his sufficiency, in such a manner as the court, the justice of the peace, or the judge, in his discretion, may think proper. The examination shall be reduced to writing and subscribed by the bail, if required by the plaintiff.—*Rev.*, 742.

1199. If bail sufficient, examination certified, sheriff exonerated.—If the court, justice of the peace, or judge, find the bail sufficient, he

shall annex the examination to the undertaking, endorse his allowance thereon, and cause them to be filed with the clerk; and the sheriff shall thereupon be exonerated from liability.—Rev., 743.

1200. Deposit in lieu of bail.—The defendant may, at the time of his arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the order. The sheriff shall thereupon give the defendant a certificate of the deposit, and the defendant shall be discharged from custody.—Rev., 744.

1201. Deposit paid into court; liability on sheriff's bond.—The sheriff shall, within four days after the deposit, pay the same into court, and shall take from the officer receiving the same two certificates of such payment, the one of which he shall deliver to the plaintiff, and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the sheriff, to collect the sum deposited, as in other cases of delinquencies.—Rev., 745.

1202. Bail substituted for deposit.—If money be deposited, as provided in the two preceding sections, bail may be given and justified upon notice according to law any time before judgment; and thereupon the judge, court or justice of the peace shall direct, in the order of allowance, that the money deposited be refunded by the sheriff or other officer to the defendant, and it shall be refunded accordingly.—Rev., 746.

1203. Deposit applied to plaintiff's judgment.—When money shall have been so deposited, if it remain on deposit at the time of an order or judgment for the payment of money to the plaintiff, the clerk or other officer shall, under the direction of the court, apply the same in satisfaction thereof, and after satisfying the judgment, shall refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant the clerk or other officer shall refund to him the whole sum deposited and remaining unapplied.—Rev., 747.

1204. Defendant in jail, sheriff may take bail.—If any person for want of bail shall be lawfully committed to jail, at any time before final judgment, the sheriff, or other officer having him in custody, may take bail and discharge him; and the bail bond shall be regarded in every respect as other bail bonds, and shall be returned and sued on in like manner; and the officer taking it shall make special return thereof, with the bond, at the first court which is held after it is taken.—Rev., 748.

1205. Sheriff liable as bail, when.—If, after being arrested, the defendant escape, or be rescued, or bail be not given or justified, or a deposit be not made instead thereof, the sheriff shall himself be liable as bail. But he may discharge himself from such liability by the giving and justification of bail at any time before process against the person of the defendant, to enforce an order or judgment in the action.—Rev., 749.

1206. Action on sheriff's bond, when.—If a judgment be recovered against the sheriff, upon his liability as bail, and an execution thereon be returned unsatisfied, in whole or in part, the same proceedings may be had on the official bond of the sheriff, to collect the deficiency, as in other cases of delinquency.—Rev., 750.

1207. Bail exonerated.—The bail may be exonerated, either by the death of the defendant or his imprisonment in a state prison, or by his legal discharge from the obligation to render himself amenable to the process, or by his surrender to the sheriff of the county where he was arrested, in execution thereof, at any time before final judgment against the bail.—Rev., 751.

Bail in a civil action is not exonerated by the fact that the principal is imprisoned for a crime when the term of imprisonment has expired before judgment against the bail.—*Adrian v. Scanlin*, 77—317.

1208. Surrender of defendant.—At any time before final judgment against them, the bail may surrender the defendant in their exoneration, or he may surrender himself to the sheriff of the county where he was arrested in the following manner:

1. A certified copy of the undertaking of the bail shall be delivered to the sheriff, who shall detain the defendant in his custody thereon, as upon an order of arrest, and shall, by a certificate in writing, acknowledge the surrender.

2. Upon the production of a copy of the undertaking and sheriff's certificate, the court, or a judge thereof, may, upon a notice to the plaintiff of ten days, with a copy of the certificate, order that the bail be exonerated, and on filing the order and papers used on said application, they shall be exonerated accordingly. But this section shall not apply to an arrest for cause mentioned in subdivision three of section seven hundred and twenty-seven, so as to discharge the bail from an undertaking given to the effect provided by law to be given by defendant for the retention of property, under subchapter entitled Claim and Delivery.—Rev., 752.

Every person arrested under the provisions of this chapter is entitled to the benefits of the chapter in The Code entitled "Insolvent Debtors."—*Burgwyn v. Hall*, 108—489.

1209. Bail may arrest defendant.—For the purpose of surrendering the defendant, the bail, at any time or place, before they are finally charged, may themselves arrest him, or by a written authority, endorsed on a certified copy of the undertaking, may empower any person over twenty-one years of age to do so.—Rev., 753.

1210. Proceedings against bail by motion.—In case of failure to comply with the undertaking the bail may be proceeded against by motion in the cause on ten days' notice to such bail.—Rev., 754.

1211. Bail liable to sheriff, when.—The bail taken upon the arrest shall, unless they justify, or other bail be given or justified, be liable to the sheriff by action for damages which he may sustain by reason of such omission.—Rev., 755.

1212. Bail to pay costs, when.—Whenever a notice shall issue against any person, as the bail of any other person, and the bail, at or before the term of the court at which such bail is bound to appear, or ought to plead, shall not be discharged from his liability as bail by the death or surrender of his principal or otherwise; in that case the bail shall be liable for all costs which may accrue on said notice, notwithstanding the bail may be afterwards discharged, by the death or surrender of the principal, or otherwise.—Rev., 756.

1213. Bail not discharged by amendment.—No amendment of process or pleading shall discharge the bail of the party arrested thereon, unless the amendment be to enlarge the sum demanded beyond the sum expressed in the bail bond.—Rev., 757.

CHAPTER XXXIV.

ATTACHMENT.

1214. When issued.—A warrant of attachment against the property of one or more defendants in an action, may be granted upon the application of the plaintiff, as specified in this chapter, when the action is to recover a sum of money only, or damages for one or more of the following causes:

1. Breach of contract, express or implied.
2. Wrongful conversion of personal property.

3. Any other injury to real or personal property, in consequence of negligence, fraud, or other wrongful act.

4. Any injury to the person, caused by negligence or wrongful act.—Rev., 758.

A warrant of attachment is void if no summons is issued in the action.—*Marsh v. Williams*, 63—371.

An attachment may be had in support of any demand arising ex contractu, the amount of which is ascertained or is susceptible of being ascertained by some certain standard referable to the contract itself, but otherwise where the claim is for purely uncertain damages.—*Wilson v. Manufacturing Co.*, 88—5.

Attachment proceedings relating to personal property being only ancillary to the main action, a justice of the peace may entertain and try an interplea to determine the title, although the value of the property exceeds \$50.—*Grambling v. Dickey*, 118—938.

1215. Affidavit must show what.—To entitle the plaintiff to such a warrant he must show by affidavit to the satisfaction of the court granting the same as follows:

1. That one of the causes of action specified in the preceding section exists against the defendant. If the action is to recover damages for breach of contract, the defendant must show that the plaintiff is entitled to recover a sum stated therein, over and above all counterclaims known to him.

2. That the defendant is either a foreign corporation or not a resident of the state, or a domestic corporation none of whose officers can be found in the state after due diligence; or, if he is a natural person and a resident of the state, that he has departed therefrom, with intent to defraud his creditors or to avoid service of summons, or keeps himself concealed therein with like intent; or, if the defendant is a natural person or a domestic corporation, that he or it has removed, or is about to remove, property from the state, with intent to defraud his or its creditors; or has assigned, disposed of, or secreted, or is about to assign, dispose of, or secrete, property with the like intent.—Rev., 759.

The warrant of attachment is an auxiliary remedy to secure the satisfaction of any judgment which may be obtained in the action, and is not only irregular but void, when (1) there is no summons to sustain the auxiliary remedy; (2) it does not appear that the defendant is trying to evade the service of process; (3) the affidavit does not show that the debtor has removed or is about to remove, assign, etc., his property, with intent to defraud his creditors.—*Marsh v. Williams*, 63—371.

The affidavit must comply strictly with all the requirements of statute.—*Ibid*; *Love v. Young*, 69—65.

Where an affidavit, made to obtain an order of arrest and an attachment, is based upon an apprehension by the affiant of some future fraudulent act by the defendant, such affidavit must specify the grounds of the apprehension; but where the affidavit relies upon an act already done, it need only state in general terms "that the said P. has disposed of and secreted his property with intent to defraud his creditors."—*Hughes v. Person*, 63—548.

A plaintiff has a right to amend his affidavit as to mere matters of form, and if he is ready to swear to his amended affidavit, it is error to refuse.—*Ibid*.

An affidavit upon which a warrant of attachment is based must be in writing, and must show that the defendant is "a non-resident and has property in this state."—*Windley v. Bradway*, 77—333.

An affidavit that "defendant was about to assign, dispose of, or secrete his property with intent to defraud his creditors," and then specified that said property was "secretly removed out of its usual place, after night, and found several miles distant, and when it was overtaken late at night, the persons having possession thereof made conflicting statements as to where they were going and whose property they had": Held, to be sufficient.—*Brown v. Hawkins*, 65—645.

An affidavit that "the defendant is absent, so that the ordinary process of law can not be served upon him," without an averment that the absence "was with the intent to defraud his creditor or creditors and to avoid the service of summons," is fatally defective.—*Love v. Young*, 69—65.

In an attachment an affidavit setting out, 1st, that the defendant is indebted, etc.; 2d, that the defendant has departed from this state with intent, as affiant is informed and believes, to avoid the service of process, is sufficient.—*Rogers v. Brower*, 76—428.

A warrant of attachment can not be supported by an allegation in the affidavit that the defendant is about to remove from the state to defraud his creditors; but such an allegation is material in an affidavit for a warrant of arrest.—*Hale v. Richardson*, 89—62.

When a defendant in an attachment moves to vacate the same for causes appearing in his affidavit, it is not necessary to serve the plaintiff with a copy of such affidavit before the motion is heard.—*Palmer v. Boshier*, 72—371.

A plaintiff has a right to amend his affidavit as to mere matters of form.—*Palmer v. Boshier*, 71—291.

Where a foreign corporation has domesticated in this state, it is not subject to attachment as a non-resident.—*Bernhardt v. Brown*, 119—506.

An allegation that defendants are about to dispose of their property "with intent to defraud plaintiffs," is an assertion not of a fact, but of a belief merely, and the grounds for the belief must be set out.—*Judd v. Mining Co.*, 120—397.

A person is a non-resident for the purpose of attachment if his residence is not such as to subject him personally to the jurisdiction of the court and place him upon an equality with other residents in this respect.—*Carden v. Carden*, 107—214.

1216. Affidavits for attachment filed.—It shall be the duty of the plaintiff procuring a warrant of attachment, within ten days from the issuing thereof, to file the affidavits on which the same was granted in the office of the clerk of the superior court to which, or with the justice of the peace before whom, the process is made returnable.—*Rev.*, 760.

1217. By whom granted.—If the action be not founded on a contract, or if founded on a contract and the sum demanded exceed two hundred dollars, a warrant of attachment may be obtained from the judge of the district embracing the county in which the action has been instituted, or from the clerk of the superior court from which the summons in the action issued; and it may be issued to any county in the state where the defendant has property, money, effects, choses in action or debts due him, and shall be made returnable in term time to the court from which the summons issued.—*Rev.*, 761.

1218. Time of issuance; service of summons essential.—The warrant of attachment may be granted to accompany the summons, or at any time after the commencement of the action. Personal service of the summons must be made upon the defendant against whose property the attachment is granted, within thirty days after the granting thereof, or else upon the expiration of the same time, service of summons by publication must be commenced pursuant to an order obtained therefor, and if publication has been, or is thereafter commenced, the service must be made complete by the continuance thereof.—*Rev.*, 762.

1219. Undertaking.—Before issuing the warrant, the officer issuing the same shall require a written undertaking on the part of the plaintiff, with sufficient surety, to the effect that if the defendant recover judgment, or the attachment be set aside by order of the court, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking, which shall be at least two hundred dollars.—*Rev.*, 763.

1220. Validity of undertaking.—It shall not be a defense to an action upon an undertaking, given upon granting a warrant of attachment, that the warrant was granted improperly, for want of jurisdiction, or for any other cause.—*Rev.*, 764.

1221. To whom warrant directed; what required of officer.—The warrant shall be directed to the sheriff of any county in which the property of such defendant may be, or in case it be issued by a justice of the peace, to such sheriff, or to any constable of such county, and shall require such sheriff or constable to attach and safely keep all the property of such defendant within his county, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint, together with costs and expenses; it must also state when and where it shall be returned. Several warrants may be issued at the same time to the sheriffs of different counties: Provided, that where the warrant is issued by a justice of the peace to another county than his own, the clerk of the superior court of his county shall certify that he is a justice of the peace; that the signature to the warrant is in the handwriting of the said justice of the peace.—*Rev.*, 765.

The clerk of the superior court has jurisdiction to vacate an attachment, though the summons be returnable to the court in term time.—*Palmer v. Boshier*, 71—291.

1222. Notice, how served.—When the warrant of attachment is taken out at the time of issuing the summons, and the summons is to be

served by publication, the order shall direct that notice be given in said publication to the defendant of the issuing of the attachment, and when the warrant of attachment is obtained after the issuing of the summons, the defendant shall be notified by publication of the fact for four successive weeks in some newspaper published in the county to which it is returnable, or if there be none such, then in one published in the judicial district including said county, and if there be no newspaper published in the district, then in any newspaper published in the state. Said publication shall state the names of the parties, the amount of the claims, and in a brief way the nature of the demand and the time and place to which the warrant is returnable: Provided, that in proceedings by attachment begun and had before justices of the peace, advertisement in a newspaper shall not be necessary, but in all such cases, advertisement at the court-house door and four other public places in the county for four successive weeks shall be sufficient publication, both as to the summons and warrant of attachment.—Rev., 766.

1223. How executed; lien on land.—The officer to whom such warrant of attachment is directed and delivered, shall seize and take into his possession the tangible personal property of the defendant, or so much thereof as may be necessary, and he shall be liable for the care and custody of such property, as if the same had been seized under execution; he shall levy on the real estate of the defendant as prescribed for executions; he shall make and return with the warrant an inventory of the property seized or levied on; subject to the direction of the court, he shall collect and receive into his possession all debts owing to the defendant, and take such legal proceedings, either in his own name or in that of the defendant, as may be necessary for that purpose: Provided, that where the sheriff or other officer shall levy an attachment upon real estate, he shall certify said levy to the clerk of the superior court of the county where the land lies, with the names of the parties, and the clerk shall note the same on his judgment docket and index the same on the index to judgments, and said levy shall be a lien only from the date of said entry by the said clerk: Provided, however, that if such levy is so docketed and indexed within five days after the making thereof it shall be a lien from the time it was made.—Rev., 767.

The process of attachment operates only on such interest of the debtor as exists at the time it is served, and not on such as may afterwards arise.—*Arrington v. Screws*, 31—42.

Property in hands of an officer under claim and delivery proceedings can not be attached.—*Williamson v. Nealy*, 119—339; *Mitchell v. Sims*, 124—411.

1224. Return of warrant of, by sheriff.—The sheriff shall return the warrant of attachment and the undertakings provided for in this chapter, with a statement of his proceedings thereon, at the time and place at which it is on its face returnable, and upon, or at any time after such return, he may obtain from the court to which the same was returnable, a certified copy thereof, which shall be held and deemed for the purpose of giving him authority, the same as the original, and when the warrant shall have been fully executed or discharged, the sheriff shall return the same, with his proceedings, to said court.—Rev., 768.

1225. When granted by justice of the peace.—If the action be not founded on contract, and the value of the property in controversy does not exceed the sum of fifty dollars, the warrant of attachment may, or if the action be founded on contract, and the sum demanded does not exceed two hundred dollars, the warrant of attachment must be obtained from, and made returnable before, some justice of the peace of a county to the superior court of which it might have been returnable had the sum demanded exceeded two hundred dollars, or had the action not have been founded on contract.—Rev., 769.

1226. Issued by justice of the peace; publication.—The plaintiff, within thirty days after obtaining a warrant of attachment from a justice of the peace, shall cause publication thereof to be made for four successive weeks at the court-house door and four other public places in the county where the warrant is returnable.—Rev., 770.

Note.—For computation of time, see s. 1324 infra.

For publication of summons, see ss. 442-444 of the Revisal.

An affidavit to obtain an order of publication of summons, in attachment proceedings, may be made by an agent or attorney.—Weaver v. Parker, 84—493.

An affidavit in attachment proceedings which fails to show that the defendant "can not after due diligence be found in this state," does not warrant an order of publication.—Faulk v. Smith, 84—501.

In case of publication, everything necessary to dispense with personal service must appear. And the affidavit will be fatally defective if it fails to state that the defendant can not, after due diligence, be found in the state.—Wheeler v. Cobb, 75—21.

Or, where it does state that he is a non-resident, but omits to state that he has property therein.—Spear v. Halstead, 71—209.

Or, that he has disposed of property, etc., with intent to defraud his creditors.—Marsh v. Williams, 63—671.

Or, where it states that he is absent, so that process can not be served upon him, but omits to state that his absence was with intent to defraud his creditors and to avoid the service of summons.—Love v. Young, 69—95.

It seems that a defective service by publication may rightfully be remedied by an order for republication.—Price v. Cox, 83—261.

If, after publication and issue of attachment, the defendant enters a general appearance, it cures all antecedent irregularity in the process.—Wheeler v. Cobb, 75—21.

Where it appears from the whole record in attachment proceedings that the statute has been substantially complied with, the action will not be dismissed or attachment dissolved.—Grant v. Burgwyn, 79—513.

1227. Justice's attachment against land.—If the attachment be levied on real property, the justice shall proceed to try the action, but shall issue no execution to sell the real property, and shall return the papers in the case to the office of the clerk of the superior court of his county, where the judgment shall be docketed. The levy of the attachment, however, shall be a lien on the real estate, when the provisions of section seven hundred and sixty-seven are complied with.—Rev., 771.

A levy on land, under an attachment issued by a justice of the peace, is sufficient, if it gives such a description as will identify the land.—Grier v. Rhyne, 67—338.

A judgment of the superior court upon a justice's execution or attachment levied on land under which judgment there was an execution and sale of the land, precludes all inquiry into the regularity of the previous proceedings.—Ibid.

1228. Sale of attached property pendente lite.—If any property, so seized, shall be perishable, or is of such a character as to materially deteriorate in value pending litigation, or of such character that the expense of keeping it until the determination of the suit would be likely to exceed one-fifth of its value, or if any part of it consists of a vessel, or of any share or interest therein, and the person to whom it belongs, or his agent, shall not within ten days after the serving of such attachment reclaim the same, the sheriff or other officer having possession thereof, shall apply to the court for authority to sell the same, stating the circumstances, and the same shall be sold, under the order and direction of the court, and the proceeds of such sale shall be liable to the judgment obtained upon such attachment, and shall be retained by the sheriff or other officer to await such judgment.—Rev., 772.

Note.—For sale of corporate property by receiver during litigation, see s. 1232 of Revisal.

1229. Replevy by defendant; undertaking.—The person owning the property advertised to be sold according to the provisions of this subchapter, his agent or attorney, may, at any time before sale, replevy the same, by giving an undertaking, in double the amount of the value of the property, with sufficient surety, to the effect that he will return the property to the sheriff, or other officer, if return thereof be adjudged by the court, and pay all costs that may be awarded against him; if return of said property can not be had, then that he will pay plaintiff the value of said property, and all costs and damages that may be awarded against him. And upon the execution of this undertaking, the sheriff, or other officer, shall deliver said property to the person owning the same.—Rev., 773.

1230. Defendant may apply for discharge and delivery of property.—

Whenever the defendant shall have appeared in such action, he may apply to the court in which the action is pending, or to the judge thereof, for an order to discharge the same; and if the same be granted, all the proceeds of sale, and moneys collected in such action, and all the property attached remaining in the hands of any officer of the court, under any process or order in such action, shall be delivered or paid to the defendant, or to his agent, and released from the attachment. And where there is more than one defendant, and the several property of either of the defendants has been seized by virtue of the order of attachment, the defendant, whose several property has been seized, may apply in like manner for relief.—Rev., 774.

A counter-claim will not lie for wrongfully suing out attachment in the same action.—*J Kramer v. Light Co.*, 95—277; *Phipps v. Wilson*, 125—106.

1231. Defendant's undertaking.—Upon such application the defendant shall deliver to the court an undertaking, executed by two sureties residing in this state, approved by such court, to the effect that such surety will, on demand, pay to the plaintiff the amount of judgment that may be recovered against the defendant in the action, not exceeding the sum specified in the undertaking, which shall be at least double the amount claimed by the plaintiff in his complaint. If it shall appear by affidavit that the property attached be of less value than the amount claimed by the plaintiff, the court or judge may order the same to be appraised, and the amount of the undertaking shall then be double the amount so appraised. And where there is more than one defendant, and the several property of either of the defendants has been seized by virtue of the order of attachment, the defendant whose several property has been seized may deliver to the court an undertaking, in accordance with this section, to the effect that he will, on demand, pay to the plaintiff the amount of judgment that may be recovered against such defendant. And all of this section, applicable to such an undertaking, shall be applied thereto.—Rev., 775.

An attachment or other provisional remedy will be vacated without any undertaking of the defendant by a judge, if on its face it appears to have been issued irregularly, or for a cause insufficient in law, or false in fact.—*Bear v. Cohen*, 65—511.

1232. Corporate stock, etc., liable to attachment.—The rights or shares which the defendant may have in the stock of any association or corporation, together with the interest and profits thereon, and all other property in this state of such defendant, shall be liable to be attached and levied on, and sold to satisfy the judgment and execution.—Rev., 776.

Note.—For execution against, see s. 1215 of Revisal.

1233. Levied on incorporeal property.—The execution of the attachment upon any such rights, shares, or any debts or other property incapable of manual delivery to the sheriff, shall be made by leaving a certified copy of the warrant of attachment with the president or other head of the association or corporation, or with the secretary, cashier, or managing or local agent thereof, or with the debtor or individual holding such property, with a notice showing the property levied on. Such certified copy must be furnished to the sheriff by the plaintiff, and the certification must be by the clerk of the court from which the warrant was issued, or by the justice of the peace who issued the same: Provided, that any person receiving or collecting moneys within this state for or on behalf of any corporation of this or any other state or government shall be deemed a local agent for the purpose of this section; but such service can be made in respect to a foreign corporation only when it has property within this state, or the cause of action arose therein, or when the plaintiff resides in the state, or when such service can be made within the state personally upon the president, treasurer or secretary thereof.—Rev., 777.

Note.—See ss. 1212 to 1218 of Revisal.

Unpaid balances due by residents of this state or non-resident corporations are subject to attachment here by creditors of such non-resident corporation.—Cooper v. Security Co., 122—463.

For the purposes of attachment the situs of a debt is where the debtor resides, and an action against a non-resident may be begun by levying attachment on a debt due by a resident of this state.—Balk v. Harris, 124—467; Cooper v. Security Co., 122—463; Winfree v. Bagley, 102—515.

1234. Certificate of defendant's interest to be furnished to sheriff.—Whenever the sheriff or other lawful officer, with a warrant of attachment or execution, shall apply to any president or other head of any association or corporation, or director, secretary, cashier or managing agent thereof, or to any debtor or individual, for the purpose of attaching or levying on the property of the defendant in such warrant, such officer, debtor or individual shall furnish him with a certificate under his hand, designating the number of rights or shares of the defendant in such association or corporation, with any dividend or any income thereon, or the amount and description of the property held by such association, corporation or individual, for the benefit of, or debt owing to the defendant. If such officer, debtor or individual refuse to do so, he may be required by the court or judge to attend before him, and be examined on oath concerning the same, and obedience to such order may be enforced by attachment.—Rev., 778.

Note.—See s. 1215 of Revisal.

1235. Garnishee summoned; answer of; judgment against.—When the sheriff or other officer shall serve an attachment on any person supposed to be indebted to, or to have any effects of the defendant in the attachment, he shall at the same time summon such person as a garnishee in writing, which summons and notice shall be issued by the clerk of the superior court, or justice of the peace, at the request of the plaintiff, to appear at the court to which the attachment shall be returnable, or if issued by a justice of the peace, at a place and time named in the notice, not exceeding twenty days from date of notice, to answer upon oath what he owes to the defendant and what effects of the defendant he hath in his hands, and had at the time of serving such attachment, and what effects or debts of the defendant there are in the hands of any other, and what person, to his knowledge and belief; and when an attachment shall be served on any garnishee in manner aforesaid, it shall be lawful upon his appearance and examination to enter up judgment and award execution for the plaintiff against such garnishee, for all sums of money due to the defendant from him, and for all effects and estates of any kind belonging to the defendant, in his possession or custody, for the use of the plaintiff, or so much thereof as shall be sufficient to satisfy the debt and costs and all charges incident to levying the same; and all goods and effects whatsoever in the hands of any garnishee belonging to the defendant shall be liable to satisfy the plaintiff's judgment, and shall be delivered to the sheriff or other officer serving the attachment.—Rev., 779.

1236. When garnishee fails to appear.—When any garnishee shall be summoned as aforesaid, and shall fail to appear and discover on oath as directed, the court, after solemnly calling the garnishee, shall enter a conditional judgment against him, and thereupon a notice shall issue against him, returnable to the court having jurisdiction, to show cause why final judgment should not be entered against him; and if, upon due execution thereof, such garnishee shall fail to appear at the time and place named in the notice, and discover on oath in manner aforesaid, the court shall confirm said judgment and award execution for the plaintiff's whole judgment and costs; and if, upon examination of the garnishee, it shall appear to the court that there is any of the defendant's estate in the hands of any person who has not been summoned, the court shall, upon motion of the plaintiff, grant a judicial attachment, to be levied in the hands of every such person having any of the

estate of the defendant in his custody or possession, who shall appear and answer, and shall be liable as other garnishees.—Rev., 780.

1237. Garnishee denying property; issue tried.—When any garnishee shall deny that he owes to or has in his possession any property of the defendant, and the plaintiff shall on oath suggest to the court the contrary; or when any garnishee shall make such a statement of facts that the court can not proceed to give judgment thereon, then the court shall order an issue to be made up, which shall be tried by a jury, and on their verdict judgment shall be rendered: Provided, that in a court of a justice of the peace he may try such issue, unless a jury be demanded, and then proceedings are to be conducted in all respects as in jury trials before courts of justices of the peace.—Rev., 781.

1238. Property with garnishee valued; when excused.—When a garnishee shall on oath confess that he has in his hands any property of the defendant of a specific nature, or is indebted to such defendant by any security or assumption for the delivery of any specific article, except as hereinafter excepted, then the court shall immediately order a jury to be impaneled and sworn to inquire of the value of such specific property, and the verdict of the jury shall subject such garnishee to the payment of the valuation, or so much thereof as shall be sufficient to satisfy the debt or damages, and costs to the plaintiff: Provided, that in a court of a justice of the peace he may try such issue, unless a jury be demanded, and then proceedings are to be conducted in all respects as in jury trials before courts of justices of the peace: Provided further, that if such garnishee shall also state in his answer that said specific property was left, or deposited, in his possession by the defendant as a bailment, or that he hath tendered said specific articles agreeable to contract, and that they were refused by the defendant, and that he then was, and always had been, ready to deliver the same; or that he had such specific articles at the time and place specified in such covenant or agreement ready to be delivered, and is still ready to deliver the same; and such statement shall be admitted by the plaintiff or found by a jury or the court, then in any such case the garnishee shall be exonerated by the delivery of such specific articles to the sheriff, who shall proceed as if the attachment had been originally levied on the property.—Rev., 782.

1239. Conditional judgment against garnishee, when.—When any garnishee shall declare in his answer that the money or specific article due by him will become payable or deliverable at a future day, and the same shall be admitted by the plaintiff or found by a jury or the court, in such case conditional judgment shall be entered against the garnishee, and the plaintiff may obtain judgment against the defendant for his demand, but shall not take final judgment against the garnishee without notice to show cause.—Rev., 783.

1240. Judgment, how satisfied.—In case judgment be entered for the plaintiff in such action, the sheriff shall satisfy the same out of the property attached by him, if it shall be sufficient for that purpose:

(1) By paying over to such plaintiff the proceeds of all property sold by him, and of all debts or credits collected by him, or so much as shall be necessary to satisfy such judgment.

(2) If any balance remain due, and an execution shall have been issued on such judgment, he shall proceed to sell under such execution so much of the attached property, real or personal, except as provided in subdivision four of this section, as may be necessary to satisfy the balance, if enough for that purpose shall remain in his hands; and in case of the sale of any rights or shares in the stock of a corporation or association, the sheriff shall execute to the purchaser a certificate of sale thereof, and the purchaser shall thereupon have all the rights and privileges in respect thereto which were had by such defendant.

3. If any of the attached property belonging to the defendant shall have passed out of the hands of the sheriff without having been sold or converted into money, such sheriff shall repossess himself of the same, and for that purpose shall have all the authority which he had to seize the same under the attachment; and any person who shall wilfully conceal or withhold such property from the sheriff, shall be liable to double damages at the suit of the party injured.

(4) Until the judgment against the defendant shall be paid, the sheriff may proceed to collect the notes and other evidences of debt, and the debts that may have been seized or attached, under the warrant of attachment, and to prosecute any bond he may have taken in the course of such proceedings, and apply the proceeds thereof to the payment of the judgment.

At the expiration of six months from the docketing of the judgment the court shall have power, upon the petition of the plaintiff, accompanied by an affidavit setting forth fully all the proceedings which have been held by the sheriff, since the service of the attachment, the property attached, and the disposition thereof, also the affidavit of the sheriff that he has used due diligence, and endeavored to collect the evidences of debt in his hands so attached, and that there remains uncollected of the same any part or portion thereof, to order the sheriff to sell the same upon such terms and in such manner as shall be deemed proper. Notice of such application shall be given to the defendant or to his attorney, if the defendant shall have appeared in the action. In case the summons has not been personally served on the defendant, the court shall make such rule or order, as to service of notice, and time of service, as shall be deemed just. When the judgment and all costs of the proceedings shall have been paid, the sheriff, upon reasonable demand, shall deliver over to the defendant the residue of the attached property or the proceeds thereof.—Rev., 784.

The personal property of a resident of this state exempted from sale under execution by the constitution can not be sold under process of attachment.—Commissioners of Montgomery v. Riley, 75—144.

Property seized under attachment is a legal deposit in the hands of the sheriff to abide the event of the suit, and when judgment is rendered against the defendant, and execution issues to the sheriff, then his powers to hold under the attachment are merged into the larger powers acquired by him under the execution.—Gamble v. Rhyne, 80—183.

1241. Plaintiff may sue on defendant's bond, when.—The actions herein authorized to be brought by the sheriff may be prosecuted by the plaintiff, or under his direction, upon the delivery by him to the sheriff of an undertaking executed by two sufficient sureties, to the effect that the plaintiff will indemnify the sheriff from all damages, costs and expenses on account thereof, not exceeding two hundred and fifty dollars in any one action. Such sureties shall in all cases, when required by the sheriff, justify by making an affidavit that each is a freeholder, and worth double the amount of the penalty of the bond, over and above all demands, liabilities and exemptions.—Rev., 785.

A warrant of attachment served upon a debtor of the defendant, with or without a certificate given of the amount of indebtedness, is merely a security for such sum as the plaintiff may recover in his action. It does not subject the garnishee to have judgment taken against him in the pending cause, but only to a separate action for its recovery.—Carmer v. Evers, 80—55.

This was formerly so, but is not now. Separate action is not necessary now. See Baker v. Belvin, 122—190.

1242. On defendant's recovery, bond and property delivered to him.—If the foreign corporation, or the absent, absconding, or concealed defendant, recover judgment against the plaintiff in such action, any bond taken upon the issuing of the warrant of attachment, and any bond taken by the sheriff, except such as are mentioned in the preceding section, all the proceeds of sales and moneys collected by him, and all the property attached remaining in his hands, shall be delivered by him to the defendant or to his agent, on request, and the warrant shall be discharged and the property released.—Rev., 786.

1243. Motion to vacate, or increase security.—The defendant, or a person who has acquired a lien upon, or interest in, his property before or after it was attached, may at any time before the actual application of the attached property, or the proceeds thereof, to the payment of a judgment recovered in the action, apply to the court having jurisdiction to vacate or modify the warrant, or to increase the security given by the plaintiff, or for one or more of those forms of relief, together or in the alternative, as in cases of other provisional remedies.—Rev., 787.

The court will not surrender property in its custody if its detention appear reasonably necessary to protect the right of the plaintiff till the trial.—Bruff v. Stern, 81—183.

The court has the power to allow an amendment of an affidavit upon which a warrant of attachment had been issued, although the former affidavit was wholly insufficient.—Brown v. Hawkins, 65—645.

1244. Exceptions to and justification of sureties.—The sureties to all undertakings in all proceedings for attachment may be excepted to, and justified as prescribed in respect to bail upon an order of arrest.—Rev., 788.

1245. Interpleader.—When the property attached shall be claimed by any other person, the claimant may interplead, as provided for interpleader in claim and delivery.—Rev., 789.

In an attachment proceeding third parties claiming a lien on the property attached can intervene and make up a collateral issue as to the title, but whether the attachment is regular is a matter between the parties to the main action.—Blair v. Puryear, 87—101; Cook v. Mining Co., 114—617; Bank v. Furniture Co., 120—475.

Attachment proceedings relating to personal property being only ancillary to the main action, a justice of the peace may entertain and try an interplea to determine the title, although the value of the property exceeds \$50.—Grambling v. Dickey, 118—986.

Issue as to whether defendant owns the property attached can not be raised by defendant, but only by interpleader.—Foushee v. Owen, 122—360.

CHAPTER XXXV.

CLAIM AND DELIVERY.

1246. Claim and delivery of personal property, when.—The plaintiff, in an action to recover the possession of personal property, may, at the time of issuing the summons, or at any time before answer, claim the immediate delivery of such property, as provided in this subchapter.—Rev., 790.

In claim and delivery, the issuing of a summons is necessary to give the court jurisdiction to make an order that the property be taken and delivered to the plaintiff.—Potter v. Mardre, 74—36.

Where, in an action of claim and delivery of personal property, the allegation as to the value was omitted in the summons, the justice of the peace properly allowed a motion to amend by filling in the blank left for such allegation.—Cox v. Grisham, 113—279.

An action for the recovery of personal property will not lie against one who was not in possession of the personal property at the time the action was commenced.—Haughton v. Newberry, 69—456.

1247. Affidavit and requisites.—Where a delivery is claimed, and affidavit must be made, before the clerk of the court in which the action is required to be tried, or before some person competent to administer oaths, by the plaintiff, or some one in his behalf, showing:

(1) That the plaintiff is the owner of the property claimed (particularly describing it), or is lawfully entitled to the possession thereof by virtue of a special property therein, the facts in respect to which shall be set forth.

(2) That the property is wrongfully detained by the defendant.

Action does not lie if defendant was not in possession of property when action was brought.—Moore v. Brady, 125—35.

(3) The alleged cause of the detention thereof, according to his best knowledge, information and belief.

(4) That the same has not been taken for tax, assessment or fine,

pursuant to a statute; or seized under an execution or attachment against the property of the plaintiff; or, if so seized, that it is, by statute exempt from such seizure; and,

(5) The actual value of the property.—Rev., 791.

Note.—For statute forbidding seizure of property taken for a tax, see s. 1274 infra.

Where the only witness examined testifies that the property is worth more than \$50, the action should be dismissed.—*Spencer v. Bell*, 109—39.

The affidavit must conform strictly to all the requirements of the statute.—*Hirsh v. Whitehurst*, 65—516.

Where the plaintiff seeks to have the immediate delivery of the property and to have the possession pending the action, the affidavit must be made; but where such delivery and possession is not demanded, the affidavit is not necessary, and the judgment for the plaintiff, if he succeeds, is for the possession of the property, or its value, and damages for detention.—*Jarman v. Ward*, 67—32.

To maintain an action to recover the possession of personal property, the plaintiff must show title or right to the present possession of the property sued for, which must be specific and be identified by a sufficient description.—*Blakely v. Patrick*, 67—40.

If a person bestows labor upon the property of another and changes it into another species of article (as corn distilled into whiskey), the property is changed, and the owner of the original material can not recover the article in its altered condition, but is entitled to its value in the shape it was taken from him.—*Potter v. Mardre*, 74—35.

One in the rightful possession of property as bailee can maintain an action of claim and delivery against a wrongdoer depriving him of possession.—*Hooper v. Miller*, 70—402.

An action for claim and delivery of personal property can be maintained by an owner against an officer taking the same under an execution against a third person.—*Jones v. Ward*, 77—337.

It will also lie against an officer for a wrongful seizure of property under execution.—*Churchill v. Lee*, 76—341.

The title to personal property and the exemption thereof may be tried under claim and delivery.—*Baxter v. Baxter*, 77—118.

Interest is not allowed as a matter of law in an action of claim and delivery, but the jury may, in their discretion and as damages, allow interest upon the value of the property from the time it was taken.—*Patapasco Guano Co. v. McGee*, 86—350.

In delivering property to a defendant, when seized in claim and delivery proceedings, without taking a proper undertaking and requiring the same to be justified, a sheriff becomes liable as a surety therein.—*Wells v. Bourne*, 113—82.

Claim and delivery lies for goods the sale of which was induced by vendee's fraud.—*Wallace v. Cohen*, 111—103.

In action before magistrate it must be alleged in the summons that the value of the property sought to be recovered does not exceed \$50.—*Leathers v. Morris*, 101—184.

And where it appears in the action that the value of the property exceeds \$50, it at once ousts the jurisdiction of the magistrate; and the plaintiff can not confer jurisdiction by a remittur.—*Noville v. Dew*, 94—43; *Bowers v. R. R.*, 107—721.

Magistrate has no jurisdiction unless it is alleged and shown that property is worth not more than \$50.—*Kiger v. Harman*, 113—406.

The preliminary affidavit will not be treated as a complaint.—*Manufacturing Co. v. Barrett*, 95—36.

Property must be capable of identification.—74—36; 115—85; 67—40; 119—113; 99—135; 125—35.

Persons other than judgment debtor may recover property in hands of sheriff under execution.—77—337; 77—341; 124—411.

Sureties are liable for costs.—*Hall v. Tillman*, 110—220.

So also where compromise judgment includes cost.—*McDonald v. McBryde*, 117—123.

Officer may break open door in complying with order in claim and delivery.—*State v. Whitaker*, 107—802.

1248. Order for sheriff to seize property and deliver to plaintiff.—

The clerk of the court shall, thereupon, by an indorsement in writing upon the affidavit, require the sheriff of the county where the property claimed may be, to take the same from the defendant and deliver it to the plaintiff: Provided, the plaintiff shall give the undertaking prescribed in the succeeding section.—Rev., 792.

The deputy of the clerk of the superior court can take the affidavit of the plaintiff and order the seizure of personal property in action of claim and delivery.—*Jackson v. Buchanan*, 89—74.

1249. Plaintiff's undertaking; copies furnished defendant.—Upon the receipt of the order from the clerk with a written undertaking payable to the defendant, executed by one or more sufficient sureties, approved by the sheriff, to the effect that they are bound in double the value of the property, as stated in the affidavit for the prosecution of the action, for the return of the property to the defendant with damages for its deterioration and detention if return can be had, and if for any cause return can not be had, for the payment to him of such sum as may be recovered against the plaintiff for the value of the property at the

time of the seizure, with interest thereon as damages for such seizure and detention, the sheriff shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, notice, and undertaking, by delivering the same to him personally, if he can be found, or to his agent, from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion.—Rev., 793.

The plaintiff can bring suit without giving bond if possession of the property is not demanded before judgment.—*Jarman v. Ward*, 67—32.

The sureties on a defendant's undertaking in claim and delivery are liable for the cost of the action upon plaintiff's recovery, notwithstanding the amendment to The Code, sec. 324, by laws 1885, ch. 50, sec. 1.—*Hall v. Tillman*, 110—220.

1250. Exceptions to undertaking; liability of sheriff.—The defendant may, within three days after the service of a copy of the affidavit and undertaking, give notice to the sheriff personally, or by leaving a copy at his office in the county town of the county, or, if he have no such office, at the office of the clerk of the court, that he excepts to the sufficiency of the sureties. If he fail to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify on notice, in like manner as upon bail on arrest. And the sheriff shall be responsible for the sufficiency of the sureties, until the objection to them is either waived as above provided, or until they shall justify, or until new sureties shall be substituted and justify. If the defendant except to the sureties, he can not reclaim the property as provided in the succeeding section.—Rev., 794.

Note.—In claim and delivery before justices, the exceptions of the defendant to the sufficiency of sureties on undertaking of plaintiff may be given to the officer, the plaintiff or his attorney, within three days from service of affidavit and undertaking; and in such case the sureties shall justify before the justice on giving the defendant or his attorney notice of the time and place, which shall not be more than three days from service of notice of exception. See s. 1475 of Revisal.

1251. Defendant's undertaking for replevy.—At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the sheriff a written undertaking, payable to the plaintiff, executed by one or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, with damages for its deterioration and its detention, if delivery can be had, and if such delivery can not for any cause be had, for the payment to him of such sum as may be recovered against the defendant for the value of the property at the time of the wrongful taking or detention, with interest thereon, as damages for such taking and detention. If a return of the property be not so required, within three days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, unless it shall be claimed by an interpleader.—Rev., 795.

1252. Justification of defendant's sureties.—The defendant's sureties, upon a notice to the plaintiff of not less than two or more than six days, shall justify before the court, a judge or justice of the peace, in the same manner as upon bail on arrest; upon such justification, the sheriff shall deliver the property to the defendant. The sheriff shall be responsible for the defendant's sureties, until they justify, or until justification is completed or expressly waived, and may retain the property until that time; but if they, or others in their place, fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.—Rev., 796.

1253. Qualification and justification of defendant's sureties, how.—The qualification of the defendant's sureties, and their justification, shall be as prescribed in respect to bail upon an order of arrest.—Rev., 797.

1254. Property concealed in buildings.—If the property, or any part thereof, be concealed in a building or enclosure, the sheriff shall publicly demand its delivery. If it be not delivered, he shall cause the building or enclosure to be broken open, and take the property into his possession; and, if necessary, he may call to his aid the power of the county, and if the property be upon the person the sheriff or other officer may seize the person, and search for and take the same.—Rev., 798.

1255. How property seized shall be kept.—When the sheriff shall have taken property as in this subchapter provided, he shall keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping the same.—Rev., 799.

1256. Property taken claimed by third person.—When the property taken by the sheriff shall be claimed by any person other than the plaintiff or defendant, the claimant may interplead upon his filing an affidavit of his title and right to the possession of the property, stating the grounds of such right and title; and upon his delivering to the sheriff an undertaking in an amount double the value of the property specified in plaintiff's affidavit, for the delivery of the property to the person entitled to the same, and for the payment of all such costs and damages as may be awarded against him; this undertaking to be executed by one or more sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property. A copy of this undertaking and accompanying affidavits shall be served by the sheriff on the plaintiff and defendant at least ten days before the return day of the summons in said action, when the court trying the same shall order a jury to be impaneled to enquire in whom is the right to the property specified in plaintiff's complaint; and the finding of the jury shall be conclusive as to the parties then in court, and the court shall adjudge accordingly, unless it is reversed upon appeal: Provided, that in a court of a justice of the peace he may try such issue unless a jury be demanded, and then proceedings are to be conducted in all respects as in jury trials before courts of justices of the peace.—Rev., 800.

1257. When sheriff may deliver property to intervenor.—Upon the filing by the claimant of the undertaking set forth in the preceding section, the sheriff shall not be bound to keep the property, or to deliver it to the plaintiff; but may deliver it to the claimant, unless the plaintiff shall execute and deliver to him a similar undertaking to that required of claimant; and notwithstanding such claim, when so made, the sheriff may retain the property a reasonable time to demand such indemnity.—Rev., 801.

When plaintiff is put in possession of property by virtue of process under this chapter, he can not move to dismiss and cut the defendant off from his defense.—*Powell v. Allen*, 103—46.

A counter-claim for damages for wrongful seizure of property by claim and delivery can not be made in the action in which seizure was made.—*Phipps v. Wilson*, 125—106.

1258. Sheriff to return undertaking, etc., in ten days.—The sheriff shall return the undertaking, notice and affidavit with his proceedings thereon to the court in which the action is pending within ten days after taking the property mentioned therein.—Rev., 802.

CHAPTER XXXVI.

INJUNCTION.

1259. Temporary, issued, when.—The writ of injunction as a provisional remedy is abolished, and a temporary injunction by order is substituted therefor. The order may be made by any judge of a

superior court in the following cases, and shall be issued by the clerk of the court in which the action is required to be tried:

(1) When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which, during the litigation, would produce injury to the plaintiff; or,

(2) When, during the litigation, it shall appear by affidavit that a party thereto is doing, or threatens, or is about to do, or is procuring or suffering some act to be done in violation of the rights of another party to the litigation respecting the subject of the action, and tending to render the judgment ineffectual; or,

(3) When, during the pendency of an action, it shall appear by affidavit of any person, that the defendant threatens, or is about to remove or dispose of his property, with intent to defraud the plaintiff.—Rev., 806.

1260. Solvent defendant restrained from cutting trees.—In an application for an injunction to enjoin a trespass on land it shall not be necessary to allege the insolvency of the defendant when the trespass complained of is continuous in its nature, or in the cutting or destruction of timber trees.—Rev., 807.

1261. Timber lands, trial of title to.—In all actions to try title to timber lands, and in all actions for trespass thereon for cutting timber trees, whenever the court shall find as a fact that there is a bona fide contention on both sides based upon evidence constituting a prima facie title, no order shall be made pending such action, permitting either party to cut said timber trees, except by consent, until the title to said land and timber trees shall be finally determined in such action: Provided, that in all cases where the title to any timber or tree, or the right to cut and remove the same during a term of years, is claimed by any party to such action, and the fee of the soil or other estate in the land by another or others, whether party to the action or not, the time within which such timber or trees may be cut or removed by the party claiming the same, and all other rights acquired in connection therewith, shall not be affected or abridged, but the running of the term shall be suspended during the pendency of such action.—Rev., 808.

1262. When timber may be cut.—Whenever in any such action the judge shall find as a fact that the contention of either party thereto is not in good faith and is not based upon evidence constituting a prima facie title, then upon motion of the other party thereto, who may satisfy the court of the bona fides of his contention, and who may produce evidence showing a prima facie title, the court may allow such party to cut the said timber trees by giving bond as now required by law. Nothing in this section shall affect the right of appeal as now allowed by law, and whenever any party to such action may be enjoined, a sufficient bond shall be required to cover all damages that may accrue to the party enjoined by reason of the injunction as now required by law.—Rev., 809.

1263. Time of issuing; copy of affidavit served.—The injunction may be granted at the time of commencing the action, or at any time afterwards, before judgment, upon its appearing satisfactorily to the judge, by the affidavit of the plaintiff, or of any other person, that sufficient grounds exist therefor. A copy of the affidavit must be served with the injunction.—Rev., 810.

1264. Not issued for more than twenty days without notice; continues until dissolved.—No restraining order, or order to stay proceedings for a longer time than twenty days, shall be granted by a judge out of court, except upon due notice to the adverse party; but the said order shall continue and remain in force until vacated after notice, to

be fixed by the court, of not less than two nor more than ten days.—Rev., 811.

1265. Issued after answer, only on notice.—An injunction shall not be allowed after the defendant shall have answered, unless upon notice, or upon an order to show cause; but in such case the defendant may be restrained until the decision of the judge granting or refusing the injunction.—Rev., 812.

Note.—For statute regulating notice, see ss. 1313 and 1314 *infra*.

1266. Order to show cause; restraint in meantime.—If the judge deem it proper that the defendant, or any of several defendants, should be heard before granting the injunction, an order may be made requiring cause to be shown, at a specified time and place, why the injunction should not be granted; and the defendant may, in the meantime, be restrained.—Rev., 813.

1267. What judges have jurisdiction.—The judges of the superior court shall have jurisdiction to grant injunctions and issue restraining orders in all civil actions and proceedings which are authorized by law: Provided, that a judge holding a special term in any county may grant an injunction or issue a restraining order, returnable before himself, in any case which he may have jurisdiction to hear and determine under the commission issued to him, and the same shall be returnable as directed by the judge in the order.—Rev., 814.

1268. Before what judge returnable.—All restraining orders and injunctions granted by any of the judges of the superior court, except a judge holding a special term in any county, shall be made returnable before the resident judge of the district, or the judge assigned to the district, or holding by exchange the courts of the district where the civil action or special proceeding is depending, within twenty days from date of order. And if the judge before whom the same is returned shall, from sickness, inability, or from any cause, fail to hear said motion and application, or to continue the same to some other time and place, then it shall be competent for any judge resident in some adjoining district, or a judge assigned to hold the court of some adjoining district, or the judge holding by exchange the court of some adjoining district, to hear and determine the said motion and application, after giving ten days notice to the parties interested in the application or motion, upon its being satisfactorily shown to him by affidavit or otherwise that the judge before whom the same was returnable failed to act upon the same, or to continue the same to some other time and place. The effect of such removal shall be to continue in force the motion and application theretofore granted, till the same can be heard and determined by the judge having jurisdiction of the same.—Rev., 815.

1269. Stipulation as to judge to hear.—By a stipulation in writing, signed by all the parties to an application for an injunction order, or their attorney, to the effect that the matter may be heard before any judge, to be designated in such stipulation, the judge before whom the restraining order is returnable by law, or who is by law the judge to hear the motion for an injunction order, shall, upon receipt of such stipulation forward the same and all the papers to the judge designated in the stipulation, whose duty it shall thereupon be to hear and decide the matter, and return all the papers to the court out of which they issued, the necessary postage or expressage money to be furnished to the judge.—Rev., 816.

1270. Undertaking.—Upon granting a restraining order, or an order for an injunction, the judge shall require as a condition precedent to the issuing thereof that the clerk shall take from the plaintiff a written undertaking, with sufficient sureties, to be justified before and approved by the said clerk, or by the judge, in an amount to be fixed by the

judge, to the effect that the plaintiff will pay to the party enjoined such damages, not exceeding an amount to be specified, as he may sustain by reason of the injunction, if the court shall finally decide that the plaintiff was not entitled thereto.—Rev., 817.

1271. Damages.—A judgment dissolving an injunction shall carry with it judgment for damages against the party procuring the injunction and the sureties on his undertaking without the requirement of malice or want of probable cause in procuring the injunction, which damages may be ascertained by a reference or otherwise, as the judge shall direct, and the decision of the court thereupon shall be conclusive as to the amount of damages upon all the persons who have an interest in the undertaking.—Rev., 878.

1272. Issued without notice, vacated when; verified answer an affidavit.—If the injunction be granted without notice, the defendant, at any time before the trial, may apply, upon notice to be fixed by the court of not less than two nor more than ten days, to the judge having jurisdiction thereof, to vacate or modify the same, if he is within the district or in an adjoining district, but if out of the district and not in an adjoining district, then before any judge at the time being in the district, and if there be no judge in the district, before any judge in an adjoining district. The application may be made upon the complaint and the affidavits on which the injunction was granted, or upon the affidavits on the part of the defendant, with or without answer; but if no such application be made, the injunction shall continue, and be in force until such application shall be made and determined by the judge, and a verified answer has the effect only of an affidavit.—Rev., 819.

1273. Opposing affidavits.—If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other proof, in addition to those on which the injunction was granted.—Rev., 820.

1274. When granted to restrain collection of taxes.—No injunction shall be granted by any court or judge to restrain the collection of any tax or any part thereof, nor to restrain the sale of any property for the nonpayment of any such tax, except such tax or the part thereof enjoined be levied or assessed for an illegal or unauthorized purpose or be illegal or invalid, or the assessment be illegal or invalid.—Rev., 821.

Note.—For action to recover illegal taxes paid, see s. 2855 of Revisal.

For injunction pending appeal from corporation commission, see s. 1080 of Revisal.

CHAPTER XXXVII.

RECEIVERS.

1275. What judge appoints.—Any judge of the superior court having authority to grant restraining orders and injunctions shall have the like jurisdiction in appointing receivers, and all motions to show cause shall be returnable as provided for injunctions.—Rev., 846.

1276. In what cases appointed.—A receiver may be appointed:

(1) Before judgment, on the application of either party, when he establishes an apparent right to property which is the subject of the action, and which is in the possession of an adverse party, and the property or its rents and profits are in danger of being lost, or materially injured or impaired; except in cases where judgment upon failure to answer may be had on application to the court.

(2) After judgment, to carry the judgment into effect.

(3) After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or when an

execution has been returned unsatisfied, and the judgment debtor refuses to apply his property in satisfaction of the judgment.

(4) In cases provided in chapter entitled Corporations and subchapter thereof entitled Receivers; and in like cases, of the property within this state of foreign corporations.

The subchapter entitled Receivers, in the chapter entitled Corporations, shall be applicable, as near as may be, to receivers appointed hereunder.—Rev., 847.

Note.—For appointment of receivers in proceedings supplemental to execution, see subchapter *infra* Supplemental Proceedings, s. 1136.

1277. Appointment refused, bond being given, when.—In all cases where there is an application for the appointment of a receiver, upon the ground that the property or its rents and profits are in danger of being lost, or materially injured or impaired, or that a corporation defendant is insolvent or in imminent danger of insolvency, and the subject of the action is the recovery of a money demand, the judge before whom such application is made or pending shall have the discretionary power to refuse the appointment of a receiver, if the party against whom such relief is asked, whether a person, partnership or corporation, shall tender to the court an undertaking payable to the adverse party in an amount double the sum demanded by the plaintiff, with at least two sufficient sureties and justified according to law, conditioned for the payment of such amount as may be recovered in such action, and summary judgment may be taken upon said undertaking. In the progress of the action the court shall have power in its discretion to require additional sureties on such undertaking.—Rev., 848.

1278. Receiver's bond.—A receiver appointed in an action or special proceeding must, before entering upon his duties, execute and file with the clerk of the court wherein the action is pending, an undertaking payable to the adverse party with at least two sufficient sureties in a penalty fixed by the judge making the appointment, conditioned for the faithful discharge of his duties as receiver. And the judge having jurisdiction thereof may at any time remove the receiver, or direct him to give a new undertaking, with new sureties, with the like condition. But this section does not apply to a case where special provision is made by law for the security to be given by a receiver, nor for increasing the same, nor for removing a receiver.—Rev., 849.

NOTE.—For giving bond in surety companies, see ss. 272 and 273 of Revisal.

CHAPTER XXXVIII.

MANDAMUS.

1279. Begun by summons and verified complaint.—All applications for writs of mandamus shall be made by summons and complaint, and the complaint shall be duly verified.—Rev., 822.

1280. Money demand enforced at term.—In all such applications, when the plaintiff seeks to enforce a money demand, the summons, pleadings and practice shall be the same as is prescribed for civil actions.—Rev., 823.

1281. Other actions returnable in vacation; issues of fact.—When the plaintiff seeks relief other than the enforcement of a money demand, the summons shall be made returnable before a judge of the superior court at chambers, or in term at a day specified in the summons, not less than ten days after the service of the summons and

complaint upon the defendant; at which time the court, except for good cause shown, shall proceed to hear and determine the action, both as to law and fact: Provided, that when an issue of fact is raised by the pleading, it shall be the duty of the court, upon the motion of either party, to continue the action until said issue of fact can be decided by a jury at the next regular term of the court.—Rev., 824.

CHAPTER XXXIX.

QUO WARRANTO.

1282.—[See sections 826-845 Revisal.]

CHAPTER XL.

NUISANCE.

1283. **How remediable.**—Injuries remediable by the old writ of nuisance are subjects of action as other injuries; and in such action there may be judgment for damages, or for the removal of the nuisance, or for both.—Rev., 825.

CHAPTER XLI.

WASTE.

1284. **How remediable.**—Wrongs, remediable by the old action of waste, are subjects of action as other wrongs; and the judgment may be for damages, forfeiture of the estate of the party offending, and eviction from the premises.—Rev., 853.

1285. **For and against whom lies.**—In all cases of waste, an action shall lie in the superior court at the instance of him in whom the right is, against all persons committing the same, as well tenant for term of life as tenant for term of years, and guardians.—Rev., 854.

1286. **Tenant in possession of particular estate liable.**—Where tenant for life or years grants his estate to another, and still continues in the possession of the lands, tenements, or hereditaments, an action shall lie against the said tenant for life or years.—Rev., 855.

1287. **Action by tenant against cotenant.**—Where a joint tenant or a tenant in common commits waste, an action shall lie against him at the instance of his cotenant or joint tenant.—Rev., 856.

1288. **Heirs may sue, when.**—Every heir shall have his action for waste committed on lands, tenements, or hereditaments of his own inheritance, as well in the time of his ancestor as in his own.—Rev., 857.

1289. **Judgment for treble damages and possession.**—In all cases of waste, when judgment shall be against the defendant, the court may give judgment for thrice the amount of damages assessed by the jury, and also that the plaintiff recover the place wasted, if the said damages shall not be paid on or before a day to be named in the judgment.—Rev., 858.

CHAPTER XLII.

COMPROMISE.

1290. Effect of compromise.—In all claims, or money demands, of whatever kind, and howsoever due, where an agreement shall have been or shall be made and accepted for a less amount than that demanded or claimed to be due, in satisfaction thereof, the payment of such less amount according to any such agreement in compromise of the whole, shall be a full and complete discharge of the same.—Rev., 859.

1291. Tender judgment; effect of refusal to accept.—The defendant, at any time before the trial or verdict, may serve upon the plaintiff an offer in writing to allow judgment to be taken against him for the sum or property, or to the effect therein specified, with costs. If the plaintiff accept the offer, and give notice thereof in writing within ten days, he may file the summons, complaint, and offer, with an affidavit of notice of acceptance, and the clerk must thereupon enter judgment accordingly. If the notice of acceptance be not given, the offer is to be deemed withdrawn, and can not be given in evidence; and if the plaintiff fail to obtain a more favorable judgment he can not recover costs, but must pay the defendant's costs from the time of the offer. In case the defendant shall set up a counter-claim in his answer to an amount greater than the plaintiff's claim, or sufficient to reduce the plaintiff's recovery below fifty dollars, then the plaintiff may serve upon the defendant an offer in writing, to allow judgment to be taken against him for the amount specified, or to allow said counter-claim to the amount specified with costs. If the defendant accept the offer, and give notice thereof in writing within ten days, he may enter judgment as above for the amount specified, if the offer entitle him to judgment, or if the amount specified in said offer shall be allowed him in the trial of the action. If the notice of acceptance be not given, the offer is to be deemed withdrawn, and can not be given in evidence; and if the defendant fail to recover a more favorable judgment, or to establish his counter-claim for a greater amount than is specified in said offer, he can not recover costs, but must pay the plaintiff's costs from the time of the offer.—Rev., 860.

1292. Conditional tender of judgment for damages.—In an action arising on contract, the defendant may, with his answer, serve upon the plaintiff an offer in writing, that if he fails in his defense, the damages be assessed at a specified sum; and if the plaintiff signify his acceptance thereof in writing, ten days before the trial, and on the trial have a verdict, the damages shall be assessed accordingly.—Rev., 861.

1293. Effect of refusal.—If the plaintiff does not accept the offer, he shall prove his damages as if it had not been made, and shall not be permitted to give it in evidence. And if the damages assessed in his favor shall not exceed the sum mentioned in the offer, the defendant shall recover his expenses incurred in consequence of any necessary preparation or defense in respect to the question of damages. Such expense shall be ascertained at the trial.—Rev., 862.

1294. Disclaimer of title to trespass; tender of judgment.—In actions of trespass upon real estate, wherein the defendant in his answer shall disclaim to make any title or claim to the lands on which the trespass is by the complaint supposed to be done, and the trespass be by negligence or involuntary, the defendant shall be permitted to make a disclaimer, and that the trespass was by negligence or involuntary, and a tender or offer of sufficient amends for such trespass; whereupon, or upon some of them, the plaintiff shall join issue, and if the issue be found for the defendant, or if the plaintiff shall be nonsuited, he shall be barred from the said action and all other suits concerning the same.—Rev., 863.

CHAPTER XLIII.

CONTROVERSY WITHOUT ACTION.

1295. How submitted; affidavit; judgment.—Parties to a question in difference which might be the subject of a civil action, may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction if an action had been brought. But it must appear by affidavit that the controversy is real, and the proceedings in good faith to determine the rights of the parties. The judge shall thereupon hear and determine the case, and render judgment thereon as if an action were pending.—Rev., 803.

1296. Judgment roll.—Judgment shall be entered on the judgment docket as in other cases, but without costs for any proceeding prior to trial. The case, the submission, and a copy of the judgment, shall constitute the judgment roll.—Rev., 804.

1297. Judgment enforced; appealed from.—The judgment may be enforced in the same manner as if it had been rendered in an action, and shall be subject to appeal in like manner.—Rev., 805.

CHAPTER XLIV.

EXAMINATION OF PARTIES.

1298. Action for discovery abolished.—No action to obtain discovery under oath, in aid of the prosecution or defense of another action, shall be allowed, nor shall any examination of a party be had, on behalf of the adverse party, except in the manner prescribed by this subchapter.—Rev., 864.

1299. Adverse party examined.—A party to an action may be examined as a witness at the instance of the adverse party, or of any one of several adverse parties, and for that purpose may be compelled, in the same manner and subject to the same rules of examination as any other witness to testify, either at the trial or conditionally or upon commission: Provided, that where a corporation is a party to an action, then any officer or agent of the corporation may be examined as is herein provided.—Rev., 865; Laws 1907, c. 799.

1300. Before trial in his own county.—The examination, instead of being had at the trial, as provided in the preceding section, may be had at any time before the trial, at the option of the party claiming it, before a judge, commissioner duly appointed to take depositions, or clerk of the court, on a previous notice to the party to be examined, and any other adverse party, of at least five days, unless for good cause shown, the judge or court shall order otherwise. But the party to be examined shall not be compelled to attend in any county other than that of his residence, or where he may be served with a summons for his attendance.—Rev., 866.

1301. Party compelled to attend.—The party to be examined, as in the preceding section provided, may be compelled to attend in the same manner as a witness who is to be examined conditionally; and the examination shall be taken and filed by the judge, clerk or commissioner in like manner, and may be read by either party on the trial.—Rev., 867.

1302. Testimony may be rebutted.—The examination of the party thus taken may be rebutted by adverse testimony.—Rev., 868.

1303. Refusal to testify; penalty.—If a party refuses to attend and testify, as in the four preceding sections provided, he may be punished as for a contempt, and his pleadings may be stricken out.—Rev., 869.

1304. Testimony of party may be rebutted.—A party examined by an adverse party, as in this subchapter provided, may be examined on his own behalf, subject to the same rules of examination as other witnesses. But if he testify to any new matter not responsive to the enquiries put to him by the adverse party, or necessary to explain or qualify his answers thereto, or discharge when his answers would charge himself, such adverse party may offer himself as a witness on his own behalf in respect to such new matter, subject to the same rules of examination as other witnesses, and shall be so received.—Rev., 870.

1305. Real party in interest examined.—A person for whose immediate benefit the action is prosecuted or defended, though not a party to the action, may be examined as a witness, in the same manner and subject to the same rules of examination, as if he were named as a party.—Rev., 871.

1306. Examination of co-plaintiff or co-defendant.—A party may be examined on behalf of his co-plaintiff or of a co-defendant as to any matter in which he is not jointly interested or liable with such co-plaintiff or co-defendant, and as to which a separate and not joint verdict or judgment can be rendered. And he may be compelled to attend in the same manner as at the instance of an adverse party; but the examination thus taken shall not be used in behalf of the party examined. And whenever one of several plaintiffs or defendants who are joint contractors, or are united in interest, is examined by the adverse party, the other of such plaintiffs or defendants may offer himself as a witness to the same cause of action or defense, and shall be so received.—Rev., 872.

Note.—For production of writings, see Evidence, s. 1656 et seq. of Revisal.

CHAPTER XLV.

TRUST FUNDS SUMMARILY PROTECTED.

1307. Trust funds ordered paid into court.—When it is admitted by the pleading or examination of a party that he has in his possession, or under his control, any money or other thing capable of delivery, which, being the subject of the litigation, is held by him as trustee for another party, or which belongs or is due to another party, the judge may order the same to be deposited in court, or delivered to such party, with or without security, subject to the further direction of the judge.—Rev., 850.

1308. Trust funds, etc., ordered seized by sheriff, when.—Whenever, in the exercise of his authority, a judge shall have ordered the deposit, delivery or conveyance of money or other property, and the order is disobeyed, the judge, besides punishing the disobedience as for contempt, may make an order requiring the sheriff to take the money or property, and deposit, deliver, or convey it, in conformity with the direction of the judge.—Rev., 851.

1309. Defendant ordered to satisfy sum admitted to be due.—When the answer of the defendant expressly, or by not denying, admits part of the plaintiff's claim to be just, the judge, on motion, may order such defendant to satisfy that part of the claim, and may enforce the order as it enforces a judgment or provisional remedy.—Rev., 852.

CHAPTER XLVI.

MOTIONS AND ORDERS.

1310. What is an order.—Every direction of a court or judge, made and entered in writing, and not included in a judgment, is denominated an order.—Rev., 873.

1311. Motions; where and when made.—An application for an order is a motion. Motions may be made to a clerk of a superior court, or to a judge out of court, except for a new trial on the merits. Motions must be made within the district in which the action is triable. A motion to vacate or modify a provisional remedy, and an appeal from an order allowing a provisional remedy, shall have preference over all other motions.—Rev., 874.

1312. Affidavit for or against, compelled.—When any party intends to make or oppose a motion in any court of record, and it shall be necessary for him to have the affidavit of any person who shall have refused to make the same, such court may, by order, appoint a referee to take the affidavit or deposition of such person. Such person may be subpoenaed and compelled to attend and make an affidavit before such referee, the same as before a referee to whom it is referred to try an issue.—Rev., 875.

1313. Motions determined in ten days.—Whenever a motion shall be made in any cause or proceeding in any of the courts, to obtain an injunction order, order of arrest, or warrant of attachment, granted in any such case or proceeding, or a motion to vacate or modify the same is made, it shall be the duty of the judge before whom such motion is made, to render and make known his decision on such motion within ten days after the day upon which such motion shall or may be submitted to him for decision.—Rev., 876.

1314. Notice of motion.—When a notice of motion is necessary, it must be served ten days before the time appointed for the hearing; but the court or judge may, by an order to show cause, prescribe a shorter time.—Rev., 877.

CHAPTER XLVII.

NOTICES.

1315. In writing.—All notices shall be in writing.—Rev., 878.

1316. On whom served.—Notices and other papers may be served on the party or his attorney personally, where not otherwise provided in this chapter.—Rev., 879.

Note.—For statute against service on Sunday, see s. 1183 infra.

1317. Service upon attorney.—If served upon an attorney, service may be made during his absence from his office by leaving a copy of the paper with his clerk therein, or with a person having charge thereof; or, when there is no person in the office, by leaving it, between the hours of six in the morning and nine in the evening, in a conspicuous place in the office; or, if it be not open so as to admit of such service, then by leaving it at the attorney's residence with some person of suitable age and discretion.—Rev., 880.

1318. Served on a party.—If upon a party, it may be made by leaving a copy of the paper at his residence, between the hours of six in the morning and nine in the evening, with some person of suitable age and discretion.—Rev., 881.

1319. Served by publication.—If upon a person who can not be found after due diligence, or who is not a resident of this state, the

service thereof may be made by the publication of the notice once a week for four successive weeks in some newspaper published in the county from which the notice is issued; and if no newspaper be published therein, then in some newspaper published within the judicial district; and the proof of service shall be as is required by law in the case of a service of a summons by publication.—Rev., 882.

1320. Publication of notices in Buncombe County.—Whenever the clerk of the superior court of Buncombe County or a judge of the superior court holding the superior court of said county shall sign or make any order directing the publication of any notice, order or proceeding required by law to be published in Buncombe County, it shall be the duty of said clerk or said judge to designate in the said order the newspaper in which said notice, order or proceeding shall be published, and no notice, order or proceeding published in any paper other than the one designated in the said order shall be legal and sufficient.—Rev., 883.

1321. Subpoena, issuance and service.—Service of a subpoena for witnesses may be made by a sheriff, coroner or constable, and proved by the return of such officer, or the service may be made by any person not a party to the action, and proved by his oath. A subpoena for witnesses need not be signed by the clerk of the court; it shall be sufficient if subscribed by the party or by his attorney.—Rev., 884.

Note.—For issuance of subpoenas by clerk, see s. 1639 of Revisal.

1322. To what this subchapter applies.—This subchapter shall not apply to the service of a summons, or other process, or of any paper to bring a party into contempt.—Rev., 885.

1323. Officer's return evidence of service.—When a notice shall issue to the sheriff, his return thereon that the same has been executed shall be deemed sufficient evidence of the service thereof.—Rev., 886.

CHAPTER XLVIII.

TIME.

1324. How computed.—The time within which an act is to be done, as provided by law, shall be computed by excluding the first day and including the last. If the last day be Sunday, it shall be excluded.—Rev., 887.

1325. Computations of, in publications.—The time for publication of legal notices shall be computed so as to exclude the first day of publication and include the day on which the act or event of which notice is given is to happen, or which complete the full period required for publication.—Rev., 888.

Note.—See ss. 443, 766, 770, 879, 884 of Revisal.

PART V.

MISCELLANEOUS STATUTES.

CHAPTER I.

ADMINISTRATION.

1. Necessity For.

1326. Penalty; what family may use.—No person shall enter upon the administration of any decedent's estate until he has obtained letters therefor, under the penalty of one hundred dollars, one-half to the use of the informer and the other half to the state; but nothing herein contained shall prevent the family of deceased from using so much of the crop, stock and provisions on hand as may be necessary, until the widow's year's support is assigned therefrom, as prescribed by law.—Rev., 1.

1327. Executor de son tort.—Every person who shall receive goods or debts of any person dying intestate, or any release of a debt due the intestate, upon a fraudulent intent, or without such valuable consideration as shall amount to the value or thereabout, shall be chargeable as executor of his own wrong, so far as such debts and goods, coming to his hands, or whereof he is released, will satisfy.—Rev., 2.

2. To Whom Granted.

1328. Order in which persons entitled.—Letters of administration, in case of intestacy, shall be granted to the persons entitled thereto and applying for the same, in the following order:

- (1) To the husband or widow, except as hereinafter provided.
- (2) To the next of kin in the order of their degree, where they are of different degrees; if of equal degree, to one or more of them, at the discretion of the clerk.
- (3) To the most competent creditor who resides within the state, and proves his debt on oath before the clerk.
- (4) To any other person legally competent.—Rev., 3.

1329. Husband, on wife's estate; his interest therein.—If any married woman shall die wholly or partially intestate, the surviving husband shall be entitled to administer on her personal estate, and shall hold the same, subject to the claims of her creditors and others having rightful demands against her, to his own use, except as hereinafter provided. If the husband shall die after his wife, but before administering, his executor or administrator or assignee shall receive the personal property of the said wife, as a part of the estate of the husband, subject as aforesaid, and except as provided by law.—Rev., 4.

1330. Disqualifications.—The clerk shall not issue letters of administration or letters testamentary to any person who, at the time of appearing to qualify—

- (1) Is under the age of twenty-one years.
- (2) Is a non-resident of this state; but a non-resident may qualify as executor.
- (3) Has been convicted of a felony.

(4) Is adjudged by the clerk incompetent to execute the duties of such trust by reason of drunkenness, improvidence or want of understanding.

(5) Fails to take the oath or give the bond required by law.

(6) Has renounced his right to qualify.—Rev., 5.

Note.—For disqualification of an executor of an executor, see s. 1340.

1331. When disqualified persons entitled.—Where an executor named in the will, or any person having a prior right to administer, is under the disqualification of nonage, or is temporarily absent from the state, such person is entitled to six months, after coming of age or after his return to the state, in which to make application for letters testamentary, or letters of administration.—Rev., 6.

1332. Forfeiture by divorce or felonious slaying.—When a marriage shall be dissolved a vinculo, the parties respectively, or when either party shall be convicted of the felonious slaying of the other, or of being accessory before the fact of such felonious slaying, the party so convicted shall thereby lose all his or her right to administer on the estate of the other, and to a distributive share in the personal property of the other, and every right and estate in the personal estate of the other.—Rev., 7.

Note.—For forfeiture by divorce a vinculo, see s. 2679.

1333. Elopement and adultery of wife forfeits right.—If any married woman shall elope with an adulterer, and shall not be living with her husband at his death, she shall thereby lose all right to a distributive share in the personal property of her husband, and all right to administer on his estate.—Rev., 8.

Note.—For forfeiture generally for elopement, see ss. 2680, 2681.

1334. How husband forfeits right as to wife's estate.—If any husband shall separate himself from his wife and be living in adultery at her death, or if she shall have obtained a divorce a mensa et thoro, and shall not be living with her husband at her death, or if the husband shall have abandoned his wife, or shall have maliciously turned her out of doors, and shall not be living with her at her death, he shall thereby lose all his right and estate of whatever character in and to her personal property, and all right to administer on her estate.—Rev., 9.

1335. Executor may renounce.—Any person appointed an executor may renounce the office by a writing signed by him, and on the same being acknowledged or proved to the satisfaction of the clerk of the superior court, it shall be filed.—Rev., 10.

1336. When renunciation required.—When any person applies for administration, and any other person has prior right thereto, a written renunciation of the person or persons having such prior right must be produced and filed with the clerk.—Rev., 11.

1337. When person entitled deemed to have renounced.—If any person, entitled to letters of administration, fails or refuses to apply for such letters within thirty days after the death of the intestate, the clerk, on application of any party interested, shall issue a citation to such person to show cause, within twenty days after service of the citation, why he should not be deemed to have renounced. If, within the time named in the citation, he neglects to answer or to show cause, he shall be deemed to have renounced his right to administer, and the clerk must enter an order accordingly, and proceed to grant letters to some other person. If no person entitled to administer shall apply for letters of administration on the estate of a decedent within six months from his death, then the clerk may, in his discretion, deem all prior rights renounced and appoint some suitable person to administer such estate.—Rev., 12.

1338. When executor deemed to have renounced.—If any person appointed an executor does not qualify or renounce within sixty days after the will is admitted to probate, the clerk of the superior court, on the application of any other executor named in the same will, or any party interested, shall issue a citation to such person to show cause why he should not be deemed to have renounced. If, upon service of the citation, he does not qualify or renounce within such time, not exceeding thirty days, as is allowed in the citation, an order must be entered by the clerk decreeing that such person has renounced his appointment as executor.—Rev., 13.

3. Will Annexed.

1339. Letters with, issued when.—If there is no executor appointed in the will, or if, at any time, by reason of death, incompetency adjudged by the clerk of the superior court, renunciation, actual or decreed, or removal by order of the court, or on any other account there is no executor qualified to act, the clerk of the superior court may issue letters of administration with the will annexed, to some suitable person or persons, in the order prescribed in this chapter.—Rev., 14.

1340. Qualification of administrators with.—Administrators with the will annexed shall have the same qualifications and give the same bond as other administrators; but the executor of an executor shall not be entitled to qualify as executor of the first testator.—Rev., 15.

4. Jurisdiction.

1341. Of clerk of superior court.—The clerk of the superior court of each county has jurisdiction, within his county, to take proof of wills and to grant letters testamentary, letters of administration with the will annexed, and letters of administration in cases of intestacy, in the following cases:

(1) Where the decedent at, or immediately previous to, his death was domiciled in the county of such clerk, in whatever place such death may have happened.

(2) Where the decedent at his death had his fixed place of domicile in more than one county, the clerk of any such county has jurisdiction.

(3) Where the decedent, not being domiciled in this state, died out of the state, leaving assets in the county of such clerk, or assets of such decedent thereafter come into the county of such clerk.

(4) Where the decedent, not being domiciled in this state, died in the county of such clerk, leaving assets in the state, or assets of such decedent thereafter came into the state.—Rev., 16.

1342. What clerk has exclusive.—The clerk who first gains and exercises jurisdiction under this chapter thereby acquires sole and exclusive jurisdiction over the decedent's estate.—Rev., 17.

5. Public Administrator.

1343. How appointed.—There may be a public administrator in every county, appointed by the clerk of the superior court for the term of eight years.—Rev., 18.

1344. Takes and subscribes oath; gives bond.—The public administrator shall take and subscribe an oath (or affirmation) faithfully and honestly to discharge the duties of his trust; and the oath so taken and subscribed must be filed in the office of the clerk of the superior court, and he must give the bond required by law.—Rev., 19.

Note.—For bond, see Bonds, s. 320 of Revisal.

1345. When letters issue to.—The public administrator shall apply for and obtain letters on the estates of deceased persons in the following cases:

(1) When the period of six months has elapsed from the death of any decedent, and no letters testamentary, or letters of administration or collection, have been applied for and issued to any person.

(2) When any stranger, or person without known heirs, shall die intestate in any county.

(3) When any person entitled to administration shall request, in writing, the clerk to issue the letters to the public administrator.—Rev., 20.

1346. Powers; duties; when term expires.—The public administrator shall have, in respect to the several estates in his hands, all the rights and powers, and be subject to all the duties and liabilities of other administrators. On the expiration of the term of office of a public administrator, or his resignation, he may continue to manage the several estates committed to him prior thereto until he shall have fully administered the same, if he shall then enter into a bond as required by law for administrators.—Rev., 21.

6. Collectors.

1347. When and how appointed.—Whenever, for any reason, a delay is necessarily produced in the admission of a will to probate, or in granting letters testamentary, letters of administration, or letters of administration with the will annexed, the clerk may issue to some discreet person or persons, at his option, letters of collection, authorizing the collection and preservation of the property of the decedent.—Rev., 22.

1348. Qualification; bond.—Every collector shall have the qualifications and give the bond prescribed by law for an administrator.—Rev., 23.

1349. Authority.—Every collector has authority to collect the personal property, preserve and secure the same, and collect the debts and credits of the decedent, and for these purposes he may commence and maintain or defend suits, and he may sell, under the direction and order of the clerk, any personal property for the preservation and benefit of the estate. He may be sued for debts due by the decedent, and he may pay funeral expenses and other debts.—Rev., 24.

1350. Authority ceases, when; duty to account.—When letters testamentary, letters of administration or letters of administration with the will annexed are granted, the powers of such collector shall cease, but any suit brought by the collector may be continued by his successor, the executor or the administrator, in his own name. Such collector must, on demand, deliver to the executor or administrator all the property, rights and credits of the decedent under his control, and render an account, on oath, to the clerk of all his proceedings. Such delivery and account may be enforced by citation, order or attachment.—Rev., 25.

7. Application for Letters.

1351. What to contain.—On application for letters of administration, the clerk must ascertain by affidavit of the applicant or otherwise—

(1) The death of the decedent and his intestacy.

(2) That the applicant is the proper person entitled to administration, or that he applies after the renunciation of the person or persons so entitled.

(3) The value and nature of the intestate's property, the names and residence of all parties entitled as heirs or distributees of the estate, if known, or that the same can not, on diligent inquiry, be procured; which of said parties are minors, and whether with or without guardians, and the names and residences of such guardians, if known. Such affidavit or other proof must be recorded and filed by the clerk.—Rev., 26.

1352. How contest over, instituted.—Any person interested in the estate may, on complaint filed and notice to the applicant, contest the right of such applicant to letters of administration, and on any issue of fact joined, or matter of law arising on the pleadings, the cause may be transferred to the superior court for trial, or an appeal be taken, as in other special proceedings.—Rev., 27.

1353. Executor gives bond, when.—Executors shall give bond as prescribed by law in the following cases:

(1) Where the executor resides out of the state. And no foreign executor has any authority to intermeddle with the estate until he shall have entered into bond, which must be done within the space of one year after the death of the testator, and not afterwards.

(2) When a man marries a woman who is an executrix, and if the husband in such case fail to give bond, the clerk, on application of any creditor or other party interested in the estate, shall revoke the letters issued to the wife and grant letters of administration with the will annexed to some other person.

(3) Where an executor, other than such as may have already given bond, obtains an order to sell any portion of the real estate for the payment of debts, as hereinafter provided, the court or clerk to whom application is made shall require, before granting any order of sale, such executor to enter into bond.—Rev., 28.

1354. Oath taken; bond given.—Before letters testamentary, letters of administration with the will annexed, letters of administration or letters of collection are issued to any person, he must give the bond required by law and must take and subscribe an oath or affirmation before the clerk that he will faithfully and honestly discharge the duties of his trust, which oath must be filed in the office of the clerk.—Rev., 29.

Note.—For bond, see Bonds, s. 319 of Revisal.

1355. Persons injured may sue on bond.—Every person injured by the breach of any bond given by an executor, administrator or collector, may put the same in suit and recover such damages as he may have sustained.—Rev., 30.

1356. Letters revoked, bond liable to successor for default.—Whenever the letters of an executor, administrator or collector are revoked, his bond may be prosecuted by the person or persons succeeding to the administration of the estate, and a recovery may be had thereon to the full extent of any damage, not exceeding the penalty of the bond, sustained by the estate of the decedent by the acts or omissions of such executor, administrator or collector, and to the full value of any property received and not duly administered. Moneys so recovered shall be assets in the hands of the person recovering them.—Rev., 31.

1357. When new bond or new sureties required.—If complaint be made on affidavit to the clerk of the superior court that the surety on any bond of an executor, administrator or collector is insufficient, or that one or more of such sureties is or is about to become a non-resident of this state, or that the bond is inadequate in amount, the clerk must issue an order requiring the principal in the bond to show cause why he should not give a new bond, or further surety, as the case may be. On the return of the order duly executed, if the objections in the complaint are found valid, the clerk shall make an order requiring the party to give further surety or a new bond in a larger amount within a reasonable time.—Rev., 32.

1358. Remedy of surety in danger of loss.—Any surety on the bond of an executor, administrator or collector, who is in danger of sustaining loss by his suretyship, may exhibit his petition on oath to the clerk of the superior court wherein the bond was given, setting forth particularly the circumstances of his case, and asking that such executor,

administrator or collector be removed from office, or that he give security to indemnify the petitioner against apprehended loss, or that the petitioner be released from responsibility on account of any future breach of the bond. The clerk shall issue a citation to the principal in the bond, requiring him, within ten days after service thereof, to answer the petition. If, upon the hearing of the case, the clerk deem the surety entitled to relief, he may grant the same in such manner and to such extent as may be just. And if the principal in the bond gives new or additional security, to the satisfaction of the clerk, within such reasonable time as may be required, the clerk may make an order releasing the surety from liability on the bond for any subsequent act, default or misconduct of the principal.—Rev., 33.

1359. Failing to give new bond, letters revoked.—If any person required to give a new bond, or further security, or security to indemnify, under the two preceding sections, fails to do so within the time specified in any such order, the clerk must forthwith revoke the letters issued to such person, whose right and authority, respecting the estate, shall thereupon cease.—Rev., 34.

1360. Letters revoked; successor appointed; estate protected.—In all cases of the revocation of letters, the clerk must immediately appoint some other person to succeed in the administration of the estate; and pending any suit or proceeding between parties respecting such revocation, the clerk is authorized to make such interlocutory order as, without injury to the rights and remedies of creditors, may tend to the better securing of the estate.—Rev., 35.

1361. Form of letters.—All letters must be issued in the name of the state, and tested in the name of the clerk of the superior court, signed by him, and sealed with his seal of office, and shall have attached thereto copies of sections forty-two and ninety-nine.—Rev., 36.

8. Revocation.

1362. On proof of will.—If, after the letters of administration are issued, a will is subsequently proved and letters testamentary are issued thereon; or, if after letters testamentary are issued, a revocation of the will, or a subsequent testamentary paper revoking the appointment of executors, is proved and letters issued thereon, the clerk of the superior court must thereupon revoke the letters first issued, by an order in writing to be served on the person to whom such first letters were issued; and, until service thereof, the acts of such person, done in good faith, are valid.—Rev., 37.

1363. For disqualification or default.—If, after any letters have been issued, it appears to the clerk, or if complaint is made to him on affidavit, that any person to whom they were issued is legally incompetent to have such letters, or that such person has been guilty of default or misconduct in the due execution of his office, or that the issue of such letters was obtained by false representations made by such person, the clerk shall issue an order requiring such person to show cause why the letters should not be revoked. On the return of such order, duly executed, if the objections are found valid, the letters issued to such person must be revoked and superseded, and his authority shall thereupon cease.—Rev., 38.

9. Advertisement for Creditors.

1364. Advertisement for claims, when and how made; cost.—Every executor, administrator and collector, within twenty days after the granting of letters, shall notify all persons having claims against the decedent to exhibit the same to such executor, administrator or collector, at or before a day to be named in such notice; which day must be

twelve months from the day of the first publication of such notice. The notice shall be published once a week for six weeks in a newspaper, if any there be published in the county. If there shall be no newspaper published in the county, then the notice shall be posted at the court-house and four other public places in the county. The cost of publishing in a paper shall in no case exceed two dollars and fifty cents.—Rev., 39.

1365. How proved.—A copy of the advertisement directed to be posted or published in pursuance of the preceding section with an affidavit, taken before some person authorized to administer oaths, of the proprietor, editor or foreman of the newspaper wherein the same appeared, to the effect that such notice was published for six weeks in said newspaper, or an affidavit stating that such notices were posted, shall be filed in the office of the clerk by the executor, administrator or collector. The copy so verified or affidavit shall be deemed a record of the court, and a copy thereof, duly certified by the clerk, shall be received as conclusive evidence of the fact of publication in all the courts of this state.—Rev., 40.

1366. Notice may be served on creditor personally.—The executor, administrator or collector may cause the notice to be personally served on any creditor, who shall, thereupon, within six months after personal service thereof, exhibit his claim, or be forever barred from maintaining any action thereon.—Rev., 41.

10. Inventory.

1367. Taken and returned within three months.—Every executor, administrator and collector, within three months after his qualification, shall return to the clerk, on oath, a just, true and perfect inventory of all the real estate, goods and chattels of the deceased, which have come to his hands, or to the hands of any person for him, which inventory shall be signed by him and be recorded by the clerk. He shall also return to the clerk, on oath, within three months after each sale made by him, a full and itemized account thereof, which shall be signed by him and recorded by the clerk.—Rev., 42.

1368. How compelled.—If the inventory and account of sale specified in the preceding section are not returned as therein prescribed, the clerk must issue an order requiring the executor, administrator or collector to file the same within the time specified in the order, which shall not be less than twenty days, or to show cause why an attachment should not be issued against him. If, after due service of the order, the executor, administrator or collector does not, on the return day of the order, file such inventory or account of sale, or obtain further time to file the same, the clerk shall have power to vacate the office of administrator, executor or collector.—Rev., 43.

Note.—For additional remedy, see Crimes.

1369. New assets inventoried.—Whenever further property of any kind, not included in any previous return, shall come to the hands or knowledge of any executor, administrator or collector, he must cause the same to be returned, as hereinbefore prescribed, within three months after the possession or discovery thereof; and the making of such return of new assets, from time to time, may be enforced in the same manner as in the case of the first inventory.—Rev., 44.

11. What are Assets.

1370. Distinction between legal and equitable abolished.—The distinction between legal and equitable assets is abolished, and all assets shall be applied in the discharge of debts in the manner prescribed by this chapter.—Rev., 45.

1371. Trust estate in personalty.—If any trustee, or any person interested in any trust estate, shall die leaving any equitable interest in personal estate which shall come to his executor, administrator or collector, the same estate shall be deemed personal assets.—Rev., 46.

1372. Crops ungathered at death.—The crops of every deceased person, remaining ungathered at his death, shall, in all cases, belong to the executor, administrator or collector, as part of the personal assets, and shall not pass to the widow with the land assigned as dower; nor to the devisee by virtue of any devise of the land, unless such intent be manifest and specified in the will.—Rev., 47.

1373. What proceeds of real estate deemed personal assets.—All proceeds arising from the sale of real property, for the payment of debts, as hereinafter provided, shall be deemed personal assets in the hands of the executor, administrator or collector, and applied as though the same were the proceeds of personal estate.—Rev., 48.

1374. What proceeds of real estate deemed real assets.—All proceeds from the sale of real estate, as hereinafter provided, which may not be necessary to pay debts and charges of administration, shall, notwithstanding, be considered real assets, and as such shall be paid by the executor, administrator or collector to such persons as would have been entitled to the land had it not been sold.—Rev., 49.

1375. Personalty fraudulently conveyed recovered.—If there be not sufficient real and personal assets of the deceased to satisfy all the debts and liabilities of the deceased, together with the costs and charges of administration, the personal representative shall have the right to sue for and recover any and all personal property which the deceased may in anywise have transferred or conveyed with intent to hinder, delay or defraud his creditors, and any money or property so recovered shall constitute assets of the estate in the hands of the personal representative for the payment of debts. But if the fraudulent alienee of deceased has sold the property or estate so fraudulently acquired by him to a bona fide purchaser for value without notice of the fraud, then such fraudulent alienee shall be liable to the personal representative for the value of the property and estate so acquired and disposed of. If the whole recovery from any fraudulent alienee of a decedent shall not be necessary for the payment of the debts of decedent and the costs and charges of administration of his estate, the surplus shall be returned to such fraudulent alienee or his assigns.—Rev., 50.

1376. Debt of executor not discharged by appointment.—The appointing of any person executor shall not be a discharge of any debt or demand due from such person to the testator.—Rev., 51.

1377. Heirs jointly liable for debts, when.—All persons succeeding to the real or personal property of a decedent, by inheritance, devise, bequest or distribution, shall be liable jointly, and not separately, for the debts of such decedent.—Rev., 52.

1378. Limit of liability of heir.—No person shall be liable, under the preceding section, beyond the value of the property so acquired by him, or for any part of a debt that might by action or other due proceeding have been collected from the executor, administrator or collector of the decedent, and it is incumbent on the creditor to show the matters herein required to render such person liable.—Rev., 53.

1379. Recovery apportioned among heirs.—In any such action the recovery must be apportioned in proportion to the assets or property received by each defendant, and judgment against each must be entered accordingly. Costs in such actions must be apportioned among the several defendants, in proportion to the amount of the recovery against each of them.—Rev., 54.

1380. Priority of debts as affecting liability of heir.—Every person who is liable for the debts of a decedent must observe the same preferences in the payment thereof as are established in this chapter; nor shall the commencement of an action by a creditor give his debt any preference over others.—Rev., 55.

1381. Defense, other debts of equality or priority.—The defendants in such action may show that there are unsatisfied debts of a prior class or of the same class with that in suit. If it appears that the value of the property acquired by them does not exceed the debts of a prior class, judgment must be rendered in their favor. If it appears that the value of the property acquired by them exceeds the amount of debts which are entitled to a preference over the debt in suit, the whole amount which the plaintiff shall recover is only such a portion of the excess as is a just proportion to the other debts of the same class with that in suit.—Rev., 56.

1382. Debts paid, estimated as unpaid in suit against heir, when.—If any debts of a prior class to that in which the suit is brought, or of the same class, has been paid by any defendant, the amount of the debts so paid shall be estimated, in ascertaining the amount to be recovered, in the same manner as if such debts were outstanding and unpaid, as prescribed in the preceding section.—Rev., 57.

1383. Contribution among devisees, where heir is liable.—The remedy to compel contribution shall be by petition or action in the superior court or before the judge in term time against the personal representatives, devisees, legatees and heirs also of the decedent, if any part of the real estate be undevisee, within two years after probate of the will, and setting forth the facts which entitle the party to relief; and the costs shall be within the discretion of the court.—Rev., 58.

12. Wrongful Death.

1384. Action for wrongful death; recovery not assets.—Whenever the death of a person is caused by a wrongful act, neglect or default of another, such as would, if the injured party had lived, have entitled him to an action for damages therefor, the person or corporation that would have been so liable, and his or their executors, administrators, collectors or successors, shall be liable to an action for damages, to be brought within one year after such death, by the executor, administrator or collector of the decedent; and this notwithstanding the death, and although the wrongful act, neglect or default, causing the death, amount in law to a felony. The amount recovered in such action is not liable to be applied as assets, in the payment of debts or legacies, but shall be disposed of as provided in this chapter for the distribution of personal property in case of intestacy.—Rev., 59.

1385. Measure of damages in wrongful death.—The plaintiff in such action may recover such damages as a fair and just compensation for the pecuniary injury resulting from such death.—Rev., 60.

13. Sales of Personalty.

1386. By collector, only on order of court.—All sales of personal property by collectors shall be made only upon order obtained, by motion, from the clerk of the superior court, who shall specify in his order a descriptive list of the property to be sold.—Rev., 61.

1387. As soon as practicable.—Every executor and administrator shall have power in his discretion and without any order, except as hereinafter provided, to sell, as soon after his qualification as practicable, all the personal estate of his decedent.—Rev., 62.

1388. Public, how made.—All sales of personal estate by an executor, administrator or collector shall be publicly made, on credit or for cash,

after twenty days notification posted at the court-house and four other public places in the county. When any person interested, either as creditor or legatee, on the day of sale objects to the completion of any sale on account of the insufficiency of the amount bid, title to such property shall not pass until the sale is reported to and confirmed by the clerk.—Rev., 63.

1389. Private, how made.—When personal property shall consist of cotton, tobacco, goods, wares and merchandise; state, national or municipal bonds, or the stocks in incorporated companies, the executor or administrator may, upon application to the clerk of the superior court, obtain an order to sell and may sell such personal property at private sale for the best price that can be obtained, and shall report such sale to the clerk for confirmation.—Rev., 64.

1390. On credit; how proceeds secured.—The proceeds of all sales of personal estate and rentings of real property by public auction or privately shall be secured by bond and good personal security; and such proceeds shall be collected as soon as practicable, otherwise the executor, administrator or collector shall be answerable for the same.—Rev., 65.

1391. Public, hours of; penalty.—All public sales or rentings provided for in this chapter shall be between the hours of ten o'clock a. m. and four o'clock p. m. of the day on which the sale or renting is to be made, except that in towns or cities of more than five thousand inhabitants public sales of goods, wares and merchandise may be continued until the hour of ten o'clock p. m.; and every executor, administrator or collector who otherwise makes any sale or renting shall forfeit and pay two hundred dollars to any person suing for the same.—Rev., 66.

1392. Evidences of debt, when and how sold.—Every executor, administrator and collector, at any time after one year from the grant of letters, shall be authorized to sell at public auction, in the manner prescribed in this chapter, all bills, bonds, notes, accounts, or other evidences of debt belonging to the decedent, which he has been unable to collect or which may be deemed insolvent. Before offering such evidences of debt at public sale he shall file with the clerk a descriptive list thereof, and obtain an order of sale therefor from the clerk, and shall make return of the proceeds of such sale as in other cases of assets.—Rev., 67.

14. Sales of Realty.

1393. To pay debts when personalty insufficient.—When the personal estate of a decedent is insufficient to pay all his debts, including the charges of administration, the executor, administrator or collector may, at any time after the grant of letters, apply to the superior court of the county where the land or some part thereof is situated, by petition, to sell the real property for the payment of the debts of such decedent.—Rev., 68.

1394. Undevised first sold.—When any part of the real estate of the testator descends to his heirs by reason of its not being devised or disposed of by the will, such undevised real estate shall be first chargeable with payment of debts, in exoneration, as far as it will go, of the real estate that is devised, unless from the will it appears otherwise to be the wish of the testator.—Rev., 69.

1395. Conveyances by heir within two years of letters.—All conveyances of real property of any decedent made by any devisee or heir at law, within two years from the grant of letters, shall be void as to the creditors, executors, administrators and collectors of such decedent; but such conveyances to bona fide purchasers for value and without notice, if made after two years from the grant of letters, shall be valid even as against creditors.—Rev., 70.

1396. Conveyed to personal representative; power of successor.—Whenever land is conveyed to a personal representative for the benefit of the estate he represents, he may sell and convey same upon such terms as he may deem just and for the advantage of said estate; which sale shall be public, after due advertisement, as for judicial sales, unless the conveyance is made to the party entitled to the proceeds. If such land is not conveyed by such personal representative during his life, or term of office, his successor may sell and convey such land as if the title had been made to him: Provided, if the predecessor has contracted in writing to sell said lands, but fails to convey same, his successor in office may do so upon payment of the purchase price.—Rev., 71.

1397. Conveyed in fraud of creditors.—The real estate subject to sale under this chapter shall include all the deceased may have conveyed with intent to defraud his creditors, and all rights of entry and rights of action and all other rights and interests in lands, tenements and hereditaments which he may devise, or by law would descend to his heirs: Provided, that lands so fraudulently conveyed shall not be taken from any one who purchased them for a valuable consideration and without a knowledge of the fraud.—Rev., 72.

1398. Fraudulent grantee, selling innocent purchaser, liable.—Whenever an executor, administrator or collector shall file his petition to sell land, which may have been fraudulently conveyed, and of which there may have been a subsequent bona fide sale, whereby he can not have a decree of sale of the land, the court may give judgment in favor of such executor, administrator or collector for the value of the land, against all persons who may have fraudulently purchased the same; and if the whole recovery shall not be necessary to pay the debts and charges, the residue shall be restored to the person of whom the recovery was made.—Rev., 73.

1399. Heirs and devisees necessary parties to proceeding.—No order to sell real estate shall be granted till the heirs or devisees of the decedent have been made parties to the proceeding, by service of summons, either personally or by publication, as required by law.—Rev., 74.

1400. Infants defend by guardian; must answer.—Infant defendants must appear by guardian, either general or special, who shall file an answer to the petition, either admitting or denying the allegations thereof, and where such answer is filed by a guardian ad litem the costs and expenses thereof, if any, may be directed to be paid, if the court thinks proper, out of the proceeds of the sale, in case one is ordered.—Rev., 75.

1401. Adverse claimant may be heard.—Whenever the land, which is sought to be sold, is claimed by another person under any pretense whatsoever, such claimant shall be admitted to be heard as a party to the proceeding, upon affidavit of his claim, and if the issue be found for the petitioner he shall have his writ of possession and order of sale accordingly.—Rev., 76.

1402. What petition for, must show.—The petition, which must be verified by the oath of the applicant, shall set forth, as far as can be ascertained:

- (1) The amount of debts outstanding against the estate.
- (2) The value of the personal estate, and the application thereof.
- (3) A description of all the legal and equitable real estate of the decedent, with the estimated value of the respective portions or lots.
- (4) The names, ages and residences, if known, of the devisees and heirs at law of the decedent.—Rev., 77.

1403. Issue joined, cause transferred to term.—When an issue of law of fact is joined between the parties, the course of the procedure shall be as prescribed in such cases for other special proceedings.—Rev., 78.

1404. Petition not denied, order made.—As soon as all proper parties are made to the proceeding, the clerk of the superior court before whom it is instituted, if the allegations in the petition are not denied or controverted, shall have power to hear the same summarily, and to decree a sale.—Rev., 79.

1405. What order contains; what title made.—The court may decree a sale of the whole or any specified parcel of the premises, in such a manner as to size of lots, place of sale, terms of credit, and security for the payment of purchase money, as may be most advantageous to the estate, and upon the coming in of the report of the sale and the confirmation thereof, title shall be made by such person, and at such time as the court may prescribe, and in all cases where the persons in possession have been made parties to the proceeding, the court may grant an order for possession.—Rev., 80.

1406. How advertised.—Notice of sale under this proceeding shall be the same as for the sale of real estate by sheriffs on execution.—Rev., 81.

1407. Lands devised to be sold by executor, who may sell.—When any or all of the executors of a person making a will of lands to be sold by his executors shall die, fail or for any cause refuse to take upon them the administration; or after having qualified shall die, resign, or for any cause be removed from the position of executor; or when there is no executor named in a will devising lands to be sold, in every such case such executor or executors as survive or retain the burden of administration, or the administrator with the will annexed, or the administrator de bonis non, may sell and convey such lands; and all such conveyances which have been or shall be made by such executors or administrators shall be effectual to convey the title to the purchaser of the estate so devised to be sold.—Rev., 82.

1408. Land sold by decedent, who makes deed.—When any deceased person shall have bona fide sold any lands, and shall have given a bond or other written contract to the purchaser to convey the same, and the bond or other written contract hath been duly proved and registered in the county where the lands are situated, if within the state, or, if not in the state, shall be proved before the clerk of the superior court and registered in the county where the obligee lives or obligor died, his executor, administrator or collector may execute a deed to the purchaser conveying such estate as shall be specified in the bond or other written contract; and such deed shall convey the title as fully as if it had been executed by the deceased obligor: Provided, that no deed shall be made but upon payment of the price, if that be the condition of the bond or other written contract.—Rev., 83.

1409. Under will, may be public or private.—Sales of real property made pursuant to authority given by will, unless the will otherwise directs, may be public or private, and on such terms as, in the opinion of the executor, are most advantageous to those interested therein.—Rev., 84.

1410. Realty bought for estate, when.—At any auction sale of real property belonging to the estate, the executor, administrator or collector may bid in the property and take a conveyance to himself as executor, administrator or collector for the benefit of the estate, when, in his opinion, this is necessary to prevent a loss to the estate.—Rev., 85.

1411. Specifically devised, devisee entitled to contribution.—If upon the hearing of any petition for the sale of real estate to pay debts,

under this chapter, the courts decree a sale of any part that may have been specifically devised, the devisee shall be entitled to contribution from other devisees, according to the principles of equity in respect to contribution among legatees. And the children and issue provided for in this chapter shall be regarded as specific devisees in such contribution.—Rev., 86.

15. Debts, Proved and Paid.

1412. Order of payment.—The debts of the decedent must be paid in the following order:

First class. Debts which by law have a specific lien on property to an amount not exceeding the value of such property.

Second class. Funeral expenses.

Third class. Taxes assessed on the estate of the deceased previous to his death.

Fourth class. Dues to the United States and to the state of North Carolina.

Fifth class. Judgments of any court of competent jurisdiction within this state, docketed and in force, to the extent to which they are a lien on the property of the deceased at his death.

Sixth class. Wages due any domestic servant or mechanical or agricultural laborer employed by the deceased, which claim for wages shall not extend to a period of more than one year next preceding the death; or if such servant or laborer was employed for the year current at the decease, then from the time of such employment; for medical services within the twelve months preceding the decease.

Seventh class. All other debts and demands.—Rev., 87.

1413. No preference in the class.—No executor, administrator or collector shall give any debt any preference whatever, either by paying it out of its class or by paying thereon more than a pro rata proportion in its class.—Rev., 88.

1414. Debts due executor not preferred.—No property or assets of the decedent shall be retained by the executor, administrator or collector in satisfaction of his own debt, in preference to others of the same class; but such debt must be established upon the same proof and paid in like manner and order as required by law in case of other debts.—Rev., 89.

1415. Debts not due, how paid.—Debts not due may be paid on a rebate of interest thereon for the time unexpired.—Rev., 90.

1416. Affidavit as to debt may be required.—Upon any claim being presented against the estate, the executor, administrator or collector may require the affidavit of the claimant or other satisfactory evidence that such claim is justly due, that no payments have been made thereon, and that there are no offsets against the same, to the knowledge of the claimant; or if any payments have been made, or any offsets exist, their nature and amount must be stated in such affidavit.—Rev., 91.

1417. Disputed debt may be referred.—If the executor, administrator or collector doubts the justness of any claim so presented, he may enter into an agreement, in writing, with the claimant, to refer the matter in controversy, whether the same be of a legal or equitable nature, to one or more disinterested persons, not exceeding three, whose proceedings shall be the same in all respects as if such reference had been ordered in an action. Such agreement to refer, and the award thereupon, shall be filed in the clerk's office, where the letters were granted, and shall be a lawful voucher for the personal representative. The same may be impeached in any proceeding against the personal representative for fraud therein: Provided, that the right to refer claims under this section shall extend to claims in favor of the estate as well as those against it.—Rev., 92.

1418. Disputed debt not referred, barred in six months.—If a claim is presented to and rejected by the executor, administrator or collector, and not referred as provided in the preceding section, the claimant must, within six months after due notice of such rejection, or after some part of the debt becomes due, commence an action for the recovery thereof, or be forever barred from maintaining an action thereon.—Rev., 93.

1419. Claim not presented in twelve months, administrator not liable.—In an action brought on a claim which was not presented within twelve months from the first publication of the general notice to creditors, the executor, administrator or collector shall not be chargeable for any assets that he may have paid in satisfaction of any debts, legacies or distributive shares before such action was commenced; nor shall any costs be recovered in such action against the executor, administrator or collector.—Rev., 94.

1420. No lien by suit against representative.—No lien shall be created by the commencement of a suit against an executor, administrator or collector.—Rev., 95.

1421. Payment of debts out of class, when valid.—Where any executor or administrator has paid any debt of his testator or intestate before all the debts of higher dignity have been paid and satisfied, and the estate of such testator or intestate was at the time of such payment solvent, but has since been rendered insolvent by the emancipation of the slaves, or the insolvency of the debtors of the estate, or other cause, without any fault or want of diligence on the part of the executor or administrator, or when any creditor has refused to accept payment of his debt in Confederate currency, and such currency was afterwards used by the executor or administrator in payment of debts of the estate, or it became of no value by the termination of the war, in all such cases payment thus made shall be deemed and held valid in law, and shall be allowed to such executor or administrator in all suits by creditors of the estate seeking to charge such executor or administrator with assets of the estate or with devastavit thereof without regard to the dignity of the debt thus paid, or on which such suit may be brought.—Rev., 96.

1422. Costs against executors, when allowed.—No costs shall be recovered in any action against an executor, administrator or collector, unless it appears that payment was unreasonably delayed or neglected, or that the defendant refused to refer the matter in controversy, in which cases the court may award such costs against the defendant personally, or against the estate, as may be just.—Rev., 97.

Note.—See Costs; see also, *infra*, s. 1441.

1423. Bonds which bind heir.—Bonds and other obligations in which the ancestor has bound his heirs shall not be put in suit against the heirs or devisees of the deceased, but shall be paid as other debts of the same class in the manner provided in this chapter.—Rev., 98.

16. Accounts.

1424. Annual.—Every executor, administrator and collector shall, within twelve months from the date of his qualification or appointment, and annually so long as any of the estate remains in his control, file, in the office of the clerk of the superior court, an inventory and account, under oath, of the amount of property received by him, or invested by him, and the manner and nature of such investment, and his receipts and disbursements for the past year in the form of debit and credit. He must produce vouchers for all payments. The clerk may examine on oath such accounting party, or any other person, concerning the receipts, disbursements or any other matter relating to the estate; and, having carefully revised and audited such account, if he approve the

same, he must endorse his approval thereon, which shall be deemed prima facie evidence of correctness.—Rev., 99.

1425. Failure to file, how compelled.—If any executor, administrator or collector omits to account, as directed in the preceding section, or renders an insufficient and unsatisfactory account, the clerk shall forthwith order such executor, administrator or collector to render a full and satisfactory account, as required by law, within twenty days after service of the order. Upon return of the order, duly served, if such executor, administrator or collector fail to appear or refuse to exhibit such account, the clerk may issue an attachment against him for a contempt, and commit him till he exhibit such account, and may likewise remove him from office.—Rev., 100.

1426. Vouchers presumptive evidence.—Vouchers are presumptive evidence of disbursement, without other proof, unless impeached. If lost, the accounting party must, if required, make oath to that fact, setting forth the manner of loss, and state the contents and purport of the voucher. And this section shall apply to guardians, collectors, trustees and to all other persons acting in a fiduciary character.—Rev., 101.

1427. Vouchers for gravestones; when cost exceeds \$100.—It shall be lawful for executors and administrators to provide suitable gravestones to mark the graves of their testators or intestates, and to pay for the cost of erecting the same, and the cost thereof shall be paid as funeral expenses and credited as such in final accounts. The cost thereof shall be in the sound discretion of the executor or administrator, having due regard to the value of the estate and to the interests of creditors and needs of the widow and distributees of the estate. Where the executor or administrator desires to spend more than one hundred dollars for such purpose he shall file his petition before the clerk of the court, and such order as will be made by the court shall specify the amount to be expended for such purpose, and same shall be approved by the resident judge of the district.—Rev., 102.

1428. Final account.—An executor or administrator may be required to file his final account for settlement in the office of the clerk of the superior court by a citation directed to him, at any time after two years from his qualification, at the instance of any person interested in the estate; but such account may be filed voluntarily at any time; and, whether the accounting be voluntary or compulsory, it shall be audited and recorded by the clerk.—Rev., 103.

1429. Trustees under wills required to file inventories and accounts.—It shall be the duty of all trustees appointed in any will admitted to probate in the state of North Carolina, into whose hands assets come, under the provisions of said will, to file inventories of such assets, and annual and final accounts of the disposition of such assets, in the office of the clerk of the superior court of the county in which said will is admitted to probate, in the same manner as is provided by law for the filing of inventories and accounts by executors and administrators.

The clerk of the superior court of the county in which such will is probated shall have the power and authority to require the filing of such inventories and accounts as is given by law to require the filing of inventories and accounts by executors and administrators, and the said clerk of said court shall audit and record such inventories and accounts in his office, and shall receive the same compensation therefor as is allowed for inventories and accounts of executors and administrators.

This act shall not be construed to alter or affect the terms of any will in which a different provision is made for the filing of inventories and accounts, than is set out herein, nor to the trustees named in such will.—Laws 1907, c. 804.

17. Accounting Compelled.

1430. By special proceeding by creditor.—Any creditor of a deceased person may, within the times prescribed by law, prosecute a special proceeding or a civil action before the judge in his own name and in behalf of himself and all other creditors of the deceased without naming them, against the personal representative of the deceased, to compel him to an account of his administration, and to pay the creditors what may be payable to them respectively.—Rev., 104.

1431. What rules govern.—The said special proceeding shall be governed by the rules of practice prescribed for special proceedings, except so far as the same are modified by this chapter.—Rev., 105.

1432. When and where summons returnable.—The summons in said special proceeding shall be returnable before the clerk of the superior court of the county in which letters testamentary or of administration were granted, and on a day not less than forty nor more than one hundred days from the issuing thereof, and not less than twenty days after the service thereof.—Rev., 106.

1433. Clerk to advertise for creditors, when.—On issuing the summons, the clerk shall advertise for all creditors of the deceased to appear before him on or before the return day and file the evidences of their claims.—Rev., 107.

1434. How advertisement published.—The advertisement shall be published at least once a week for not less than four weeks in some newspaper which may be thought by the clerk the most likely to inform all the creditors, and shall also be posted at the court-house door for not less than thirty days. If, however, the estate does not exceed three thousand dollars in value, and the creditors are supposed by the clerk all to reside within the county or to be known, publication in a newspaper may be omitted, and in lieu thereof the advertisement shall be posted at four public places in the county, besides the court-house door. Proof of personal service on a creditor or that a copy of the advertisement was sent to him by mail at his usual address shall be as to him equivalent to publication.—Rev., 108.

1435. Creditors to file claims; appoint agent.—The creditors of the deceased, on or before the required day, shall file with the clerk the evidences of their demands, and every creditor on filing such claim shall endorse thereon or otherwise name some person or place within the town in which the court is held, upon whom or where notices in the cause may be served or left, otherwise he shall be deemed to have notice of all motions, orders and proceedings in the cause filed or made in the clerk's office.—Rev., 109.

1436. How claims proven.—If the evidence of the demand be other than a judgment, or some writing signed by the deceased, it shall be accompanied by the oath of the creditor, or if he be non-resident or infirm or absent, or in any other proper case, of some witness of the transaction, or of some agent of the creditor, that to the best of his knowledge and belief the claim is just, and that all due credits have been given.—Rev., 110.

1437. Representative to file claims; notice to creditors.—On the day of his appearance the personal representative shall on oath give to the clerk a list of all claims against the deceased of which he has received notice or has any knowledge, with the names and residences of the claimants, to the best of his knowledge and belief; and if any person so named shall have failed to file evidence of his claim, the clerk shall immediately cause a notice requiring him to do so to be served on him, which may be done by posting the same, directed to him at his usual address.—Rev., 111.

1438. Clerk to exhibit claims to representative.—On the day fixed for the appearance of the personal representative, the clerk shall exhibit to him a list of all the claims filed in his office with the evidences thereof.—Rev., 112.

1439. Representative denying claim, notice to creditor.—Within five days thereafter the defendant shall state in writing on said list, or on a separate paper, which of said claims he disputes in whole or in part. The clerk shall then notify the creditor, as above provided, that his claim is disputed, and the creditor shall thereupon file in the office of the clerk a complaint founded on his said claim, and the pleadings shall be as in other cases.—Rev., 113.

1440. Issues joined, cause docketed for hearing.—If the issues joined be of law, the clerk shall send the papers to the judge of the superior court for trial, as is provided for by the chapter on Civil Procedure in like cases. If the issues shall be of fact, the clerk shall send so much of the record as may be necessary to the next term of the superior court for trial.—Rev., 114.

1441. Costs paid by representative personally, when.—If any personal representative shall deny the liability of his deceased upon any claim evidenced as is provided in this chapter, and the issue shall finally be decided against him, the costs of the trial shall be paid by him personally, and not allowed out of the estate, unless it shall appear that he had reasonable cause to contest the claim and did so bona fide.—Rev., 115.

Note.—See s. 1422.

1442. Representative failing to appear, procedure.—If the personal representative shall fail to appear on the return day, the clerk or judge of the superior court may permit him afterward to appear and plead on such terms as may be just.—Rev., 116.

1443. Clerk to state an account.—Immediately after the return day the clerk or judge shall proceed to hear such evidence as shall be brought before him, and to state an account of the dealings of the personal representative with the estate of his deceased according to the course of his court.—Rev., 117.

1444. Account stated; examined; excepted to; signed.—After the clerk shall have stated the account and prepared his report, he shall notify all the parties to examine and except to the same. Any party may then except to the same in whole or in part. The clerk shall then pass on the exceptions and prepare and sign his final report and judgment, of which the parties shall have notice.—Rev., 118.

1445. Either party may appeal; security given for costs.—Any party may appeal from a final judgment of the clerk to the judge of the superior court in term time, on giving an undertaking with surety, or making a deposit, to pay all costs which shall be recovered against him. If any creditor shall appeal and give such security, his appeal shall be deemed an appeal by all who are damaged by the judgment, and no other creditor shall be required to give any undertaking.—Rev., 119.

1446. Papers filed; cause docketed for trial.—On an appeal the clerk shall file his report and judgment and all the papers in his office as clerk of the superior court, and enter the case on his trial docket for the next term.—Rev., 120.

1447. Certain creditors may docket judgments, when.—If the exceptions and questions, from the decision on which the appeal is taken, affect only the creditors in one or more classes, the creditors in the prior classes by the leave of the clerk, or of the judge of the superior court, may docket their judgments and issue execution thereon.—Rev., 121.

1448. Judgment, if assets sufficient to pay a class.—If upon taking the account it shall be admitted, or be found, without appeal, that the defendant has assets sufficient, after the deduction of all proper costs and charges, to pay all the claims which have been presented of any one or more of the classes, the clerk shall give judgment in favor of the creditors whose debts of such classes have been admitted, or adjudged by any competent court; and if any claim in any preferred class be in litigation, the amount of such claim, with the probable costs of the litigation, shall be left in the hands of the personal representative, and not carried to the credit of any subsequent class until the litigation is ended.—Rev., 122.

1449. Judgment, if assets insufficient to pay a class.—If the assets be insufficient to pay in full all the claims of any class, the amounts thereof having been found or admitted as aforesaid, the clerk may adjudge payment of a certain part of such claims, proportionate to the assets applicable to the debts of that class.—Rev., 123.

1450. What judgment contains; execution.—All judgments given by a judge or clerk of the superior court against a personal representative for any claim against his deceased shall declare:

(1) The certain amount of the creditor's demand.

(2) The amount of assets which the personal representative has applicable to such demand. Execution may issue only for this last sum with interest and costs.—Rev., 124.

1451. When judgment to fix with assets.—No judgment of any court against a personal representative shall fix him with assets, except a judgment of the judge or clerk, rendered as aforesaid, or the judgment of some appellate court rendered upon an appeal from such judgment. All other judgments shall be held merely to ascertain the debt, unless the personal representative by pleading expressly admits assets.—Rev., 125.

1452. Form and effect of execution.—All executions issued upon the order or judgment of the judge or clerk or of any appellate court against any personal representative, rendered as aforesaid, shall run against the goods and chattels of the deceased, and if none, then against the goods and chattels, lands and tenements of the representative. And such judgments docketed in any county shall be a lien on the property for which execution is adjudged as fully as if it were against him personally.—Rev., 126.

1453. Report evidence of assets only as of its date.—The account and report and adjudication by the judge, clerk or any appellate court shall not be evidence as to the assets except on the day to which such adjudication relates.—Rev., 127.

1454. Assets subsequent to report, how shown.—Any creditor may afterwards, on filing an affidavit by himself or his agent that he believes that assets have come to the hands of the personal representative since that day, and on giving an undertaking, with surety, or making a deposit for the costs of the personal representative, may sue out a summons against him alleging subsequent assets, and the proceedings thereon shall be as hereinbefore prescribed, so far as the same may be necessary.—Rev., 128.

1455. Suit for accounting or debt brought to term.—In addition to the remedy by special proceeding, actions against executors, administrators, collectors and guardians may be brought originally to the superior court at term time; and in all such cases it shall be competent for the court in which said actions shall be pending to order an account to be taken by such person or persons as said court may designate, and to adjudge the application or distribution of the fund ascertained, or to grant other relief, as the nature of the case may require.—Rev., 129.

1456. Personal assets insufficient, land proceeded against.—If it shall appear at any time during, or upon, or after the taking of the account of a personal representative that his personal assets are insufficient to pay the debts of the deceased in full, and that he died seized of real property, it shall be the duty of the judge or clerk, at the instance of any party, to issue a summons in the name of the personal representative or of the creditors generally, to the heirs, devisees and others in possession of the lands of the deceased, to appear and show cause why said lands should not be sold for assets.—Rev., 130.

1457. Proceedings to sell real estate, how conducted.—Upon the return of the summons the proceeding shall be as is directed in other like cases.—Rev., 131.

18. Distribution.

1458. Order of distribution.—The surplus of the estate, in case of intestacy, shall be distributed in the following manner, except as hereinafter provided:

(1) If there are not more than two children, one-third part to the widow of the intestate, and all the residue by equal portions to and among the children of the intestate and such persons as legally represent such children as may then be dead.

(2) If there are more than two children, then the widow shall share equally with all the children and be entitled to a child's part.

(3) If there be no child nor legal representative of a deceased child, then one-half the estate shall be allotted to the widow, and the residue be distributed equally to every of the next of kin of the intestate, who are in equal degree, and to those who legally represent them.

(4) If there be no widow, the estate shall be distributed, by equal portions, among all the children, and such persons as legally represent such children as may be dead.

(5) If there be neither widow nor children, nor any legal representative of the children, the estate shall be distributed equally to every of the next of kin of the intestate, who are in equal degree, and those who legally represent them.

(6) If, after the death of the father and in the lifetime of the mother, any of his children shall die intestate, without wife or children, every brother or sister, and the representatives of them, shall have an equal share with the mother of the deceased child.

(7) If there be no child nor legal representative of a deceased child nor any of the next of kin of the intestate, then the widow, if there be one, shall be entitled to all the personal estate of such intestate.—Rev., 132.

Note.—For distribution of recovery for wrongful death, see s. 1384.

1459. Advancements accounted for.—Children who shall have any estate by the settlement of the intestate, or shall be advanced by him in lifetime, shall account with each other for the same in the distribution of the estate in the manner as provided by the second rule in the chapter entitled Descents, and shall also account for the same to the widow of the intestate in ascertaining her child's part of the estate.—Rev., 133.

1460. Children advanced to render schedule.—Where any parent shall die intestate, who had in his or her lifetime given to, or put in the actual possession of, any of his or her children, any personal property of what nature or kind soever, such child shall cause to be given to the administrator or collector of the estate an inventory, on oath, setting forth therein the particulars by him or her received of the intestate in his or her lifetime.—Rev., 134.

1461. Children refusing to account for advances not to share.—In case any child who had, in the lifetime of the intestate, received a part of said estate, shall refuse to give such inventory, he shall be consid-

ered to have had and received his full share of the deceased's estate, and shall not be entitled to receive any further part or share.—Rev., 135.

1462. Illegitimate children next of kin to mother.—Every illegitimate child of the mother dying intestate, or the issue of such illegitimate child deceased, shall be considered among her next of kin, and as such shall be entitled to a share of her personal estate as prescribed in this chapter.—Rev., 136.

1463. Illegitimate children next of kin to each other.—Illegitimate children, born of the same mother, shall be considered legitimate as between themselves and their representatives, and their personal estate shall be distributed in the same manner as if they had been born in lawful wedlock. And in case of the death of any such child or his issue, without leaving issue, his estate shall be distributed among his mother and all such persons as would be his next of kin if all such children had been born in lawful wedlock.—Rev., 137.

19. After-born Children .

1464. Share in realty, in what allotted.—The share of an after-born child in real estate shall be allotted to him out of any lands not devised, if there be enough for that purpose; and if there be none undevised, or not enough, then the whole share, or the deficiency, as the case may be, shall be made up of the lands devised; and so much thereof shall be taken from the several devisees according to their respective values, as near as may be convenient, as will make the proper share of such child.—Rev., 138.

1465. Share in personalty, in what allotted.—The share of an after-born child in the personal estate shall be paid and delivered to him out of any such estate not bequeathed, if there be enough for that purpose; and if there be none undisposed of, or not enough, then the whole share, or the deficiency, as the case may be, shall be made up from the estate bequeathed; and so much shall be taken from the several legacies, according to their respective values, as will make the proper share of such child.—Rev., 139.

1466. Share in personalty, when allotted in proceeds of realty.—If, after satisfaction of the child's share of real estate out of undevised lands, there be a surplus of such lands, and there be no personal estate undisposed of, or not enough to make up his share of such estate, then the surplus or undevised land, or so much as may be necessary, shall be sold and the proceeds applied to making up his share of personal estate. And if, after satisfaction of the child's share of personal estate out of property undisposed of by the will, there be a surplus of such property, then the surplus thereof shall be applied, as far as it will go, in exoneration of land, both devised and descended; and the same shall be set apart and secured as real estate to such child, if an infant non compos or feme covert.—Rev., 140.

1467. Decree of contribution for share in realty, effect of.—Upon the allotment to such child of any real estate in the manner aforesaid, he shall thenceforth be seized thereof in fee simple; and the court shall give judgment severally, in favor of such of the devisees and legatees, of whose lands and legacies more has been taken away than in proportion to the respective values of said lands and legacies, against such of said devisees and legatees, of whose lands and legacies a just proportion has not been taken away, for such sums as will make the contribution on the part of each and every of them equitable, and in the ratio of the values of the several devises and legacies.—Rev., 141.

1468. When deemed legatee or devisee.—An after-born child after such decrees shall be considered and deemed in law a legatee and devisee as to his portion, shall be styled as such in all legal proceed-

ings, and shall be liable to all the obligations and duties by law imposed on such: Provided, that all judgments or decrees bona fide obtained against the devisees and legatees previously to the preferring of any petition, and which were binding upon or ought to operate upon the lands and chattels devised or bequeathed, shall be carried into execution and effect notwithstanding, and the petitioner shall take his portion completely subject thereto: Provided, further, that any suit instituted against the devisees and legatees previously to such petition shall not be abated or abatable thereby nor by the decree thereon, but shall go on as instituted, and the judgment and decree, unless obtained by collusion, be carried into execution; but on the filing of the petition, during the pendency of such suit, the petitioner, by guardian, if an infant, may become a defendant in the suit.—Rev., 142.

1469. If no petition filed, how estate settled.—In case no petition shall be filed within two years, as herein prescribed, the executor or administrator with the will annexed, before he shall pay or deliver the legacies in the will given, or before paying to the next of kin of the testator any residue undisposed of by the will, shall call upon the legatees, devisees, heirs and next of kin, and the said after-born child, by petition in the superior court, to litigate their respective claims, and shall pray the court to ascertain the share to which said child shall be entitled, and to apportion the shares and sums to which the legatees, devisees, heirs or next of kin shall severally contribute toward the share to be allotted to said child, and the court shall adjudge and decree accordingly.—Rev., 143.

20. Settlement.

1470. Legacies and distributive shares; how recovered.—Legacies and distributive shares may be recovered from an executor, administrator or collector by petition preferred in the superior court, at any time after the lapse of two years from his qualification, unless the executor, administrator or collector shall sooner file his final account for settlement. The suit shall be commenced and the proceedings therein conducted as prescribed in other cases of special proceedings.—Rev., 144.

1471. Distributive shares paid to clerk, when.—It shall be competent for any executor, administrator or collector, at any time after twelve months from the date of letters testamentary or of administration, to pay into the office of clerk of the superior court of the county where such letters were granted, any moneys belonging to the legatees or distributees of the estate of his testator or intestate, and such payment shall have the effect to discharge such executor, administrator or collector and his sureties on his official bond to the extent of the amount so paid.—Rev., 145.

1472. Clerk to give receipt under seal.—It shall be the duty of the clerk, in the cases provided for in the preceding section, to receive such money from any executor, administrator or collector, and to execute a receipt for the same under the seal of his office.—Rev., 146.

1473. Must be made at end of two years.—No executor, administrator or collector, after two years from his qualification, shall hold or retain in his hands more of the deceased's estate than amounts to his necessary charges and disbursements and such debts as he shall legally pay; but all such estate so remaining shall, immediately after the expiration of two years, be divided and be delivered and paid to the person to whom the same may be due by law or the will of the deceased.—Rev., 147.

1474. What may be retained.—If, on a final accounting before the judge or clerk, it appears that any claim exists against the estate which is not due, or on which suit is pending, the judge or clerk shall allow a sum sufficient to satisfy such claim, the proportion to which it may

be entitled, to be retained in the hands of the executor, administrator or collector, for the purpose of being applied to the payment when due or when recovered, with the expense of contesting the same. The order allowing such sum to be retained must specify the amount and nature of the claim.—Rev., 148.

1475. Commissions allowed; proviso.—The clerks of the superior court are authorized and directed to allow commissions to executors, administrators and collectors on filing their final accounts for settlement, not exceeding five per cent upon the amount of receipts and expenditures, which shall appear to be fairly made in the course of administration; and such allowance may be retained out of the assets against creditors and all other persons claiming an interest in the estate. And the clerk, in making such allowance, shall consider the trouble and time expended in the management of the business: Provided, that in sales of land for payment of debts, commissions shall not be allowed on any larger amount of the proceeds than the sum actually applied in payment of debts: Provided further, that nothing in this section contained shall prevent any executor, administrator or collector from retaining a reasonable sum of necessary charges and disbursements in the management of the estate. And any judge of the superior court or any commissioner appointed by said court to take and state an account of the assets of any deceased person in the hands of an executor, administrator or collector, upon any plea of fully administered, shall have power and be authorized and directed to allow such executor, administrator or collector not exceeding five per cent upon the amount of receipts and expenditures which shall appear upon the trial of said cause or taking of such account to have been fairly made in the course of administration.—Rev., 149.

1476. Petition may be filed for.—An executor, administrator or collector, who has filed his final account for settlement, may, at any time thereafter, file his petition against the parties interested in the due administration of the estate, in the superior court of the county in which he qualified, or before the judge in term time, setting forth the facts, and praying for an account and settlement of the estate committed to his charge. The petition shall be proceeded on in the manner prescribed by law, and, at the final hearing thereof, the judge or clerk may make such order or decree in the premises as shall seem to be just and right.—Rev. 150.

1477. Fund due absent party or infant without guardian paid to court; party not heard of in seven years, procedure.—When any balance of money or other estate which is due an absent defendant or infant without guardian is found in the hands of an executor, administrator or collector who has preferred his petition for settlement, the court or judge may direct such money or other estate to be paid into court, to be invested upon interest, or otherwise managed under the direction of the judge, for the use of such absent person or infant. When the party entitled to the money has not been heard of for seven years or more the fund shall be distributed among the next of kin of the absent deceased person as prescribed by statute, in the following manner: An administrator shall be appointed and made a party to a special proceeding in which a verified petition shall be filed setting forth the facts, with names of the parties entitled, and such other evidence as may be required by the clerk in whose office said fund was deposited, and the proceedings conducted as other special proceedings; and the order disposing of the fund shall be approved and confirmed by the judge, either in term or at chambers.—Rev., 151.

1478. Liability and compensation of clerk.—Every clerk of the superior court who may be intrusted with money or other estate in such case shall be liable on his official bond for the faithful discharge

of the duties enjoined upon him by the judge in relation to said estate, and he may receive such compensation for his services as the judge may allow.—Rev., 152.

1479. When paid to university.—All sums of money, or other estate of whatever kind, which shall remain in the hands of any executor, administrator or collector for five years after his qualification, unrecovered or unreclaimed by suit, by creditors, next of kin, or others entitled thereto, shall be paid by the executor, administrator or collector to the trustees of the University of North Carolina; and the said trustees are authorized to demand, sue for, recover and collect such moneys or other assets of whatever kind, and hold the same without liability for profit or interest, until a just claim therefor shall be preferred by creditors, next of kin, or others entitled thereto; and if no such claim shall be preferred within ten years after such money or other estate be received by the said trustees, then the same shall be held by them absolutely.—Rev., 153.

1480. Who parties to proceeding for settlement.—In all actions and proceedings by administrators or executors for a final settlement of their estates and trusts, whether at the instance of distributees, legatees or creditors or of themselves, if the personal representative die or be removed pending such actions or proceedings, the administrator *de bonis non* or administrator with the will annexed, as the case may be, shall be made party as provided in other cases, or in such way as the court may order, and the action or proceeding shall be conducted to its end, and such judgment shall be rendered on the confirmation of the report, or upon the terms of settlement, if any shall be agreed upon by the parties, as will fully protect and discharge all parties to the record.—Rev., 154.

1481. Legacies ordered paid within two years, when.—It shall be in the power of the judge or court, on petition or action, within two years from the qualification of an executor, administrator or collector, to adjudge the payment in full or partially, of legacies and distributive shares, on such terms as the court shall deem proper, when there shall be no necessity for retaining the fund.—Rev., 155.

21. Actions By and Against Representatives.

1482. Right of action survives to, and against.—Upon the death of any person, all demands whatsoever, and rights to prosecute or defend any action or special proceeding, existing in favor of or against such person, except as hereinafter provided, shall survive to and against the executor, administrator or collector of his estate.—Rev., 156.

Note.—For action for wrongful death, see ss. 59 and 60 of Revisal.

1483. Actions which do not survive.—The following rights of action do not survive:

- (1) Causes of action for libel and for slander, except slander of title.
- (2) Causes of action for false imprisonment, assault and battery, or other injuries to the person, where such injury does not cause the death of the injured party.
- (3) Causes where the relief sought could not be enjoyed, or granting it would be nugatory, after death.—Rev., 157.

1484. Right of action survives to successor.—Executors and administrators shall have actions in like manner as the first testator or intestate might have had against any person, his executors and administrators, in all cases, except where such actions, being commenced, are not allowed by statute to be revived on the death of any party.—Rev., 158.

1485. May maintain any appropriate action to recover assets.—Executors, administrators or collectors may maintain any appropriate

action or proceeding to recover assets, and to recover possession of the real property of which executors are authorized to take possession by will; and to recover for any injury done to such assets or real property at any time subsequent to the death of the decedent.—Rev., 159.

1486. Must be in representative capacity.—All actions and proceedings brought by or against executors, administrators or collectors, upon any cause of action or right to which the estate is the real party in interest, must be brought by or against them in their representative capacity.—Rev., 160.

1487. Appearance by, or service on, one binds all.—In actions against several executors, administrators or collectors they are all to be considered as one person, representing the decedent; and if the summons is served on one or more, but not all, the plaintiff may proceed against those served, if he recovers, judgment may be entered against all.—Rev., 161.

1488. Action against, when; execution issues, how.—An action may be brought by a creditor against an executor, administrator or collector on a demand at any time after it is due, but no execution shall issue against the executor, administrator or collector on a judgment therein against him without leave of the court, upon notice of twenty days and upon proof that the defendant has refused to pay such judgment its ratable part, and such judgment shall be a lien on the property of the defendant only from the time of such leave granted.—Rev., 162.

1489. Service by publication, when.—Whenever process may issue against an executor who has not given bond, and the same can not be served upon him by reason of his absence or concealment, service of such process may be made by publication in the manner prescribed in other civil actions.—Rev., 163.

1490. Successor may issue execution, when.—Any executor, administrator or collector may have execution issued on any judgment recovered by any person who preceded him in the administration of the estate, or by the decedent, in the same cases and the same manner as the original plaintiff might have done.—Rev., 164.

1491. Letters revoked, action continues.—In case the letters of an executor, administrator or collector are revoked, pending an action to which he is a party, the adverse party may, notwithstanding, continue the action against him in order to charge him personally. If such party does not elect so to do, within six months after notice of such revocation, the action may be continued against the successor of the executor, administrator or collector in the administration of the estate, in the same manner as in case of death.—Rev., 165.

22. Miscellaneous Provisions.

1492. How personal representatives hold.—Every estate vested in executors, administrators or collectors, as such, shall be held by them in joint tenancy.—Rev., 166.

1493. Personal representative liable.—The executors and administrators of persons, who, as rightful executors or as executors in their own wrong, or as administrators, shall waste or convert to their own use any estate or assets of any person deceased, shall be chargeable in the same manner as their testator or intestate might have been.—Rev., 167.

1494. Bona fide administration under act of 1868-9 validated.—If any person shall have bona fide administered any estate or any part of the estate of any deceased person whereof original administration was granted prior to the first day of July, under the said act of one thousand eight hundred and sixty-eight and one thousand eight hundred and sixty-nine, he shall not be deemed guilty of a devastavit.—Rev., 168.

1495. Time in which act to be done may be extended.—If no length of notice, or no time for the doing of an act, is stated in this chapter, the time shall be reasonable, and in any case it may be enlarged by the clerk from time to time, or by the judge of the superior court, on application to him or on appeal to him from the clerk.—Rev., 169.

1496. Powers under will not affected; proviso.—Nothing in this chapter shall be construed to affect the discretionary powers, trusts and authorities of an executor or other trustee acting under a will: Provided, creditors be not delayed thereby, nor the order changed in which by law they are entitled to be paid.—Rev., 170.

1497. Causes transferred to superior court, when.—All cases for the sale of real estate for assets heretofore in the county courts, in which final orders for collection and application or distribution of purchase money and making title were not made before the adoption of the present constitution, may, at the instance of any person interested, be transferred, as other cases, to the superior court of the county where such proceeding was pending, and such court shall have full authority to make all necessary orders to complete the same.—Rev., 171.

1498. Estates prior to certain dates.—This chapter shall apply to the estates of such deceased persons only whereof original administration has been granted subsequent to the first day of July, one thousand eight hundred and sixty-nine, and all estates whereon administration was granted prior to the said first day of July, one thousand eight hundred and sixty-nine shall be dealt with, administered and settled according to the law as it existed just prior to said date, and it is hereby declared that such is the true intent and meaning of this chapter: Provided, that nothing herein shall be construed to prevent the application of this chapter so far as it relates only to the courts having jurisdiction of any action or proceeding for the settlement of an administration or to the practice and procedure therein.—Rev., 172.

1499. To what estates this chapter applicable.—This chapter shall apply only to cases where the grant of letters of collection or of probate or of administration shall have issued on or after the first day of July, one thousand eight hundred and sixty-nine, except in case of administration de bonis non upon estates where the former letters of administration or letters testamentary were granted prior to the first of July, one thousand eight hundred and sixty-nine, in all which cases estates shall be administered, closed up and settled according to the law as it existed just prior to the first of July, one thousand eight hundred and sixty-nine.—Rev., 173.

Note.—To compel surviving partner to settle, see Partnership.

How administrators or executors charge their own estate, see s. 974 of Revisal.

CHAPTER II.

ADOPTION OF MINOR CHILDREN.

1500. Petition filed before clerk, what to contain.—Any person desiring to adopt any minor child may file a petition in the superior court of the county wherein such child resides, setting forth the name and age of such child and the name of its parents, whether the parents or either of them be living, and if there be no living parent, the name of the guardian, if any, and if there be no guardian, the name of the person having charge of the child or with whom such child resides, the amount and nature of the child's estate, if any, and especially if the adoption is for the minority or for the life of the child.—Rev., 174.

1501. Parties to proceeding.—The parent or guardian, or the person having charge of such child, or with whom it may reside, must be a party of record in this proceeding.—Rev., 175.

1502. Letters of, when granted.—Upon the filing of such petition, and with the consent of the parent or parents, if living, or of the guardian, if any, or of the person with whom such child resides, or who may have charge of such child, the court may, if the petitioner be a proper and suitable person, sanction and allow such adoption by an order granting letters of adoption.—Rev., 176.

1503. Effect of order; child to inherit, when; name changed.—Such order, when made, shall have the effect forthwith to establish the relation of parent and child between the petitioner and the child during the minority or for the life of such child, according to the prayer of the petition, with all the duties, powers and rights belonging to the relationship of parent and child, and in case the adoption be for the life of the child, and the petitioner die intestate, such order shall have the further effect to enable such child to inherit the real estate and entitle it to the personal estate of the petitioner in the same manner and to the same extent such child would have been entitled to if such child had been the actual child of the person adopting it: Provided, such child shall not so inherit and be so entitled to the personal estate, if the petitioner specially set forth in his petition such to be his desire and intention: Provided further, for proper cause shown in said petition the court may decree that the name of such child may be changed to that of the petitioner.—Rev., 177.

1504. Bond to secure orphan's property.—If such child be an orphan and without guardian, and shall be possessed of any estate, the court shall require from the petitioner such bond as is required by law to be given by guardians.—Rev., 178.

1505. Clerk to record order; revocation.—The order granting letters of adoption shall be recorded in the office of the clerk of the superior court of the county in which it is made, and may be revoked at any time by the court for good cause shown.—Rev., 179.

1506. Right to custody forfeited by abandonment.—In all cases where the surviving parent of any orphan child shall have wilfully abandoned the care, custody, nurture and maintenance of any orphan child to kindred, relatives or other persons, such parent shall be deemed to have forfeited all rights and privileges with respect to the care, custody and services of such child.—Rev., 180.

1507. Restoration of rights and privileges.—The rights and privileges of such parent may be restored by the voluntary surrender of such child by the person in whose care and custody such child may be, or by order of any judge of the superior court in the district in which such child may be, when it shall appear to the satisfaction of such judge that the interest and welfare of such child will not be materially prejudiced by such restoration. The person having the care and custody of any such child shall have at least ten days' notice of the time and place of the hearing of the application for such order of restoration, and shall be permitted to resist the same.—Rev., 181.

Note.—For contests over custody of children, see Habeas Corpus, s. 1853 of Revisal.

For effect of divorce on children, see Divorce and Alimony, s. 1570 of Revisal.

For right of parent to determine custody of children by deed or will, see Guardian, s. 1762 of Revisal.

For small allowance paid to indigent children by clerk, in certain cases, see s. 924 of Revisal.

CHAPTER III.

ALIENS.

1508. May take and hold lands.—It shall be lawful for aliens to take both by purchase and descent, or other operation of law, any lands, tenements or hereditaments, and to hold and convey the same as fully as citizens of this state can or may do, any law or usage to the contrary notwithstanding.—Rev., 182.

1509. Prior contracts validated.—All contracts to purchase or sell real estate by or with aliens, heretofore made, shall be deemed and taken as valid in all intents and purposes.—Rev., 183.

CHAPTER IV.

APPRENTICES.

1. Power of Clerk.

1510. To apprentice, or send to orphanage.—Upon complaint made in writing by three reputable citizens to the clerk of the superior court of any county that there is any infant in such county subject to any of the conditions enumerated in this chapter, it shall be the duty of the said clerk of the superior court, upon ten days notice to the complainants, and the parents or persons with whom such infant resides, to examine into the allegations of the said complaint, upon oath, and if the said clerk of the superior court shall find upon such examination that the conditions set forth in such complaint are true, it shall be the duty of said clerk, in his discretion, to procure for said infant admission into some orphan asylum in the state, or to bind out the said infant as an apprentice.—Rev., 184.

1511. To determine incapacity, desertion or drunkenness.—Incapacity, desertion or drunkenness shall be decided before the clerk of the superior court upon application, as in special proceedings, when necessary.—Rev., 185.

1512. Must examine persons as to circumstances; tradesmen of useful art preferred.—On application of any person to have an apprentice bound to him, it shall be the duty of the clerk to inform himself of the circumstances of the case, and for this purpose he may cite before him the relatives of the orphan or infant for examination on oath, and he may examine also such other persons as he may deem proper. In the selection of an employer, he shall prefer, so far as may be consistent in other respects with the comfort and interest of the apprentice, some tradesman of a useful art or mystery. No white child shall be apprenticed to any other than a white person.—Rev., 186.

1513. May modify; discharge apprentice and re-apprentice.—The clerk shall have power, when circumstances require it, upon application of either the employer or the apprentice, to modify the indentures of an apprentice or to discharge him from his apprenticeship; and in case any money or other thing of value has been paid by either party in relation to such apprenticeship, the clerk shall make such order concerning the same as shall be just and reasonable; and he shall have power where an apprentice is discharged to re-apprentice him, when such a course shall seem proper and practicable.—Rev., 187.

1514. May direct disposition of wages.—When money, wages or other thing of value is agreed to be paid to the apprentice, the clerk is empowered to direct such disposition of the same as shall seem to him just and proper; and in the case of money, he may either direct that

so much be placed at the disposal of the apprentice as shall be proper, or so much paid to the parents of the apprentice for their use, or so much paid into the clerk's office to the credit of the said apprentice.—Rev., 188.

1515. Guardian to be appointed when \$100 in clerk's hands.—When ever as much as one hundred dollars shall come into the hands of any clerk of the superior court belonging to an apprentice by reason of the preceding section, it shall be his duty to appoint and qualify a guardian for the estate of said apprentice, and turn the said funds over to said guardian for investment; and the said guardian shall be appointed and qualified and be governed by the same rules and regulations as guardians of said estate.—Rev., 189.

Note.—For payment by clerk to indigent child of estate less than twenty dollars, see s. 924 of Revisal.

2. The Apprentice.

1516. Who may be apprenticed.—Children who may be apprenticed shall include:

(1) All orphans whose estates are of so small value that no person will educate and maintain them for the benefit thereof.

(2) All infants whose fathers have deserted their families and been absent six months, leaving them without sufficient support.

(3) Any poor child who is or may be chargeable to the county or shall beg alms.

(4) Any child who has no father, and the mother is of bad character, or suffers her children to grow up in habits of idleness, without any visible means of obtaining an honest livelihood.

(5) All infants whose parents do not habitually employ their time in some honest, industrious occupation.

(6) All indigent infants under sixteen years of age, who, on account of the neglect, crime, drunkenness, lewdness or other vice of the parents, or person with whom such infants reside, are in circumstances exposing such infants to lead an idle and dissolute life.—Rev., 190.

1517. May make complaint of ill usage, violation of indenture; duty of clerk.—Upon the complaint of any apprentice that his employer is guilty of cruelty or ill usage toward said apprentice, or refuses him necessary provisions or clothing, or violates any other stipulation of the indenture or of the law toward such an apprentice, the clerk may, by order, compel the appearance of the said employer before him, when he shall examine and determine the complaint, and if the same is well founded, he shall cancel the indenture and discharge such apprentice from his obligation of service, and may proceed to apprentice the discharged infant to some other employer.—Rev., 191.

1518. Compelled to serve.—If an apprentice refuses to serve as required by the indenture or by law, the clerk may, on application of the employer, compel him by citation or otherwise to appear for inquiry into the facts, and if the complaint is well founded and the apprentice persists in such refusal, the clerk may commit him by warrant to the house of correction or to the common jail of the county until he consents.—Rev., 192.

1519. Person enticing away apprentice, penalty.—If any person shall entice away an apprentice from his employer, he shall pay therefor three dollars for every day the apprentice shall remain out of the service of the said employer; and any person who shall knowingly conceal, harbor or employ such an apprentice shall in like manner pay the employer therefor three dollars per day for every day such apprentice shall be concealed, harbored or employed.—Rev., 193.

3. The Employer.

1520. Shall provide, what.—Whenever an indigent child shall be apprenticed, his employer shall, in the indenture, agree to provide (1) diet, clothes, lodging and accommodations fit and necessary; (2) that the apprentice be taught to read and write and the rules of arithmetic to the double rule of three; (3) six dollars in cash, a new suit of clothes and a new Bible at the end of the apprenticeship; (4) such other education as may be agreed upon and inserted in the indenture by the clerk; (5) the clerk shall also insert in the indenture the amount of money or other thing of value to be paid to the apprentice by his employer annually during the continuance of the apprenticeship, so that the indenture will show the compensation to be paid the apprentice for each year's service.—Rev., 194.

1521. Annual report made by, to clerk.—Employers of apprentices shall be required in the indentures made before the clerk to make a report annually to him as to whether the stipulations in the indenture have been performed or not, as required in the same, in which shall be set forth the amount to be paid, and the amount actually paid said apprentice, and also the progress and general condition of the apprentice, including his moral, mental and physical condition; which report shall be required under the same pains, penalties and regulations as is required of guardians. The said employer shall also, at the end of the apprenticeship, make a final report to the clerk as to the apprenticeship as guardians are required to do.—Rev., 195.

1522. Shall not remove apprentice from state; indenture cancelled, when.—It shall not be lawful for an employer to remove an apprentice out of this state, and whenever any employer of an apprentice shall wish to remove out of this state, or to quit his trade or business, he shall appear with his apprentice before the clerk of the proper county, and if the clerk be satisfied the employer has done justice to the said apprentice for the time he has had charge of him, he shall have power to discharge such apprentice from the service of such employer and again bind him, if necessary, to some other person.—Rev., 196.

4. The Indenture.

1523. In name of clerk and employer.—Indigent children when apprenticed shall be indentured in the name of the superior court clerk of the county where they reside, of the first part, and the employer to whom apprenticed, of the other part.—Rev., 197.

1524. For what time apprenticed.—Indigent male children may be apprenticed till the age of twenty-one, and females till the age of eighteen; but said children shall be apprenticed for a less number of years, whenever in the opinion of the clerk the best interests of the apprentice will be subserved thereby. The age of children when apprenticed shall always be inserted in the indenture.—Rev., 198.

1525. Relator in action on indenture; limitation.—The apprentice may bring an action on the indenture in the name of the clerk and his successors in office and recover any damages sustained by reason of the breach of the covenants contained in said indenture; but no action on an indenture shall be commenced after two years from the expiration of the term of service.—Rev., 199.

1526. Indentures to be registered by register of deeds.—Every indenture binding an apprentice to be effectual shall be proved and recorded in the register of deeds' office of the county where the parties thereto reside, as deeds and conveyances, and shall be subject to the same rules of evidence as deeds and conveyances.—Rev., 200.

5. To Learn a Trade.

1527. Who may be apprenticed.—Minor children above the age of fourteen and under twenty-one years being males, and eighteen being females, whether indigent or not, may be apprenticed to learn the art or mystery of any trade or craft by their father, or in case of his death, incompetency, or where he shall have wilfully abandoned his family for six months without making suitable provisions for their support, or has become an habitual drunkard, by their mother or by their legal guardian; and if illegitimate, they may be bound by their mother, and if they have no parent competent to act and no guardian, they may bind themselves with the approbation of the superior court clerk of the county where they reside; but the power of a mother to bind her children, whether legitimate or illegitimate, shall cease upon her subsequent marriage and shall not be exercised by herself or her husband at any time during such marriage. But no white child shall be bound to any other than a white person, and no negro child shall be bound to any white person if a competent and suitable negro can be found in the county who desires such child bound to him.—Rev., 201.

1528. Apprentices over fourteen to sign indenture.—When an apprentice is bound who is over fourteen years of age, as provided in the foregoing section, his or her consent shall be expressed in the indenture and testified to by signing the same, and the age of said apprentice shall also be inserted in said indenture.—Rev., 202.

1529. Orphan asylum may execute indentures.—Any orphan asylum, or charitable institution organized and incorporated for the purpose of taking care of indigent children under any general or special law of this state, is hereby authorized and empowered to execute indentures apprenticing children in their charge for the purpose of learning trades, the said children being fourteen years of age, and they shall have the same rights and assume the same liabilities thereunder as in case of natural persons.—Rev., 203.

1530. What indenture to contain.—All indentures apprenticing minors to learn trades shall contain the following covenants and provisions:

(1) That said minor shall be bound to serve his employer for a term of not less than three nor more than five years.

(2) That said minor so indentured shall not leave his said employer during the term for which he shall be indentured, and if any apprentice so indentured as aforesaid shall leave his employer except as herein-after provided, the said employer may compel the return of said apprentice under the penalties of this chapter.

(3) That said employer shall covenant and agree in said indenture as to the compensation which is to be given the apprentice annually, specifying board, medical attention, lodging and clothes, when they are to be given, and also the wages to be paid in money and at what periods to be paid, and to whom.

(4) That the said employer shall teach, or cause to be carefully and skilfully taught, to said apprentice every branch of the business to which he is indentured.

(5) That said employer shall, at the expiration of said apprenticeship, give to said apprentice a certificate in writing, stating that said apprentice has served a full term of apprenticeship of not less than three nor more than five years at such trade or craft as may be specified in said indenture.

(6) That if either the employer or the apprentice, during the continuance of the apprenticeship, shall be unavoidably prevented from performing any of the conditions of the indenture, and a settlement with respect to the same can not be made by the parties to the indenture, the matter shall be referred to arbitrators for settlement, one to be selected by the employer and one on the part of the apprentice, and if

they can not decide the controversy, the two arbitrators chosen to select a third, and the decision of any two of said arbitrators to be final as to the matters in controversy.—Rev., 204.

1531. Apprentice compelled to serve, how.—Any apprentice, so indentured, who shall leave his employer without his consent, or without sufficient cause, and shall refuse to return, may be arrested upon complaint of said employer and taken before any justice of the peace of the county where the employer resides, and said justice of the peace may order said indentures cancelled, and on conviction may commit said apprentice to the house of correction or county jail until said apprentice agrees to abide by the indenture, which shall not exceed thirty days; and in case said apprentice so indentured shall still wilfully neglect or refuse to perform his portion of the contract as specified in said indenture, then said indenture may be cancelled in the manner aforesaid, and said apprentice so violating said indenture shall forfeit all back pay and all claims against said employer: Provided, either party shall have right of appeal.—Rev., 205.

1532. Employer failing to teach apprentice liable for damages and a penalty.—Should any employer neglect or refuse to teach or cause to be taught to said apprentice the art or mystery of the trade or craft to which said apprentice has been indentured, or fail to perform any of the stipulations of the indenture, said apprentice, by his parent, guardian or next friend, may bring an action against said employer to recover damages sustained by reason of said neglect or refusal; and if proved to the satisfaction of the court, said court shall direct said indenture to be cancelled, and may impose a penalty on said employer not exceeding three hundred dollars and not less than fifty dollars, and said penalty shall be collected and paid over to said apprentice or his parent or guardian for his sole use and benefit.—Rev., 206.

Note.—For wilful violation of duty to an apprentice by his employer, see Crimes.

CHAPTER V.

ATTORNEYS AT LAW.

1. How Licensed.

1533. Examination.—No person shall practice law without first obtaining license so to do from the supreme court. Applicants for license shall be examined only on the first Monday of each term of the supreme court. All examinations shall be in writing, and based upon such course of study, and conducted under such rules, as the court may prescribe. All applicants who shall satisfy the court of their competent knowledge of the law and upright character shall receive license to practice in all the courts of this state.—Rev., 207; Laws 1907, c. 70.

1534.—Conditions precedent to examination.—Before being allowed to stand an examination, each applicant must comply with the following conditions:

(1) He must be at the time twenty-one years of age, or will arrive at that age before the time for the next examination.

(2) He must file with the clerk of the court a certificate of good moral character, signed by two attorneys who practice in that court. An applicant from another state may have such certificate signed by any state officer of the state from which he comes.

(3) He must deposit with the clerk twenty-one dollars and fifty cents. Of this sum one dollar and fifty cents shall be retained by the clerk. If the applicant obtains license the remaining twenty dollars shall be

paid by the clerk to the librarian for use of the supreme court library. If the applicant fails on examination the twenty dollars shall be repaid him.—Rev., 208.

1535. Oath taken in open court.—Attorneys, before they shall be admitted to practice law, shall, in open court before a justice of the supreme or judge of the superior court, take the oath prescribed for attorneys, and also the oaths of allegiance to the state, and to support the constitution of the United States, prescribed for all public officers, and the same shall be entered on the records of the court; and, upon such qualification had, and oath taken, may act as attorneys during their good behaviour.—Rev., 209.

1536. Persons disqualified.—No clerk of the superior or supreme court, nor deputy or assistant clerk of said courts, nor sheriff, nor any justice of the peace, nor county commissioner shall practice law.—Rev., 210.

Note.—Persons above named practicing law guilty of misdemeanor, see Crimes.

2. Debarred.

1537. For crime.—No person who shall have been duly licensed to practice law as an attorney shall be debarred or deprived of his license and right to so practice law, either permanently or temporarily, unless he shall have been convicted, or in open court confessed himself guilty, of some criminal offense showing him to be unfit to be trusted in the discharge of the duties of his profession, and unless he shall be debarred according to the provisions of this chapter.—Rev., 211.

1538. Failure to account to client.—Whenever a final judgment has been recovered against an attorney at law for property received or money collected for his client, the clerk of the court shall retain such cause on the trial docket until the next term of such court, beginning not less than ninety days after the rendition of such final judgment. If such judgment be not then satisfied, the judge presiding shall make an order, which shall be entered on the records of the court, for such attorney to show cause, at a time and place to be named in such order, and upon the return thereof may make an order debarring such attorney at law from practicing law in any of the courts, and he shall thereby be debarred from so practicing. When any such judgment shall be rendered in the court of a justice of the peace, and it is thereupon sought to debar an attorney at law under this section, the cause shall be docketed on the civil issue docket of the superior court, and written notice served on such attorney ninety days before action by the court.—Rev., 212.

1539. Act of 1907.—(1) That an attorney at law must be disbarred and removed for the following causes by the superior court: (a) Upon his being convicted of a crime punishable by imprisonment in the penitentiary; (b) when any judgment is rendered against him for money collected by him as an attorney and retained by him without any bona fide claim thereto or to any part thereof.

(2) That an attorney at law may be disbarred or suspended at the discretion of the court: (a) Upon its being found by a jury that he has been guilty of any conduct in the practice of his profession involving wilful deceit or fraud; (b) that he has by himself or another solicited professional business.

(3) Proceedings for the disbarment or suspension of an attorney under this act shall be instituted and prosecuted only by the committee on grievances of the North State Bar Association.

(4) The accusation as formulated by the committee on grievances of said State Bar Association shall be signed by the chairman of said committee and attested by the secretary of said association, accompanied by the written affidavit of any person or persons who make

charges against such attorney, if any, duly verified and setting forth the facts upon which the same may be based, and shall be delivered by the secretary of said association or by the chairman of said committee to the solicitor of the judicial district in which such attorney resides, and thereupon the said solicitor shall draw up such accusation, citing the accused to appear before the superior court of the county in which he resides, or in some adjoining county thereto, on a day named therein, and moving the court for the disbarment or suspension of such attorney, and have the same served by the sheriff of said county by delivering a copy thereto to the accused, and the original thereof, with the return of the sheriff, shall be delivered to the judge holding the court of the district.

(5) That the judge of said superior court must, if of opinion that the accusation would, if true, warrant the disbarment or suspension of the accused attorney, make an order requiring the accused to appear and answer the same at a specified day during the next term of said court in which the proceeding is instituted, or at any other time when the court can hear and determine the same, a copy of which, together with a copy of the accusation, must be duly served upon the accused as aforesaid: Provided, that if such order is made as much as ten days before any term of said court, such accusation must be made returnable and be heard during such term, unless continued for good cause by said court upon such terms as it may impose; and if such proceeding is begun less than ten days before a term of such court, it shall stand for hearing at the succeeding term, unless the court shall order otherwise.

(6) That the accused attorney may answer such accusation either by objecting in writing to its sufficiency or by denying the truth of the facts alleged, or setting forth the facts of his defense, which said answer as to facts by denial or otherwise must be in writing, signed by the accused and duly verified by him; and thereupon the accusation, objections and answer are hereby made a part of the records of said court as in other civil actions therein pending.

(7) That if the accused pleads guilty or fails or refuses to answer the accusations, the court must proceed to judgment of disbarment or suspension; and if he answers the accusation, the court must at such time as it may appoint proceed to try the same; the jury or judge finding the facts must make a special finding of the facts upon issues of facts submitted to them, and the court must, upon such facts found, thereupon render judgment of acquittal or of disbarment or of suspension, as such facts may warrant: Provided, however, that such accused attorney may at any time stop or prevent the prosecution of said proceeding by a surrender of his license as an attorney at law, and record of such surrender shall be made in the supreme court of the state.

(8) That the proceeding must be conducted in the name of the state, and in all cases the solicitor of said district shall appear and prosecute such accusation and be responsible for the faithful discharge of such duty or of other official duties required of him by law, and he may be assisted by other counsel: Provided, however, that the court may, upon the motion of said solicitor, and upon good cause shown at any time, require the North Carolina State Bar Association to give security for the costs of such proceedings, to be approved by the court within ten days after notice thereof, and the hearing of said cause shall be postponed for that time unless such security be given.

(9) That either party may appeal to the supreme court of North Carolina from an adverse judgment rendered by said superior court in the manner now prescribed by law for appeals in civil actions.

(10) That all laws in conflict with this act are hereby repealed.

(11) That this act shall be in force from and after its ratification.

In the General Assembly read three times, and ratified this the 11th day of March, A. D. 1907.—Laws 1907, c. 941.

3. Relation to Client.

1540. Authority filed or produced if requested.—Every attorney who shall claim to enter an appearance for any person shall, upon being required so to do, produce and file in the clerk's office of the court in which he shall claim to enter an appearance, a power or authority to that effect, signed by the persons or some one of them for whom he is about to enter an appearance, or by some person duly authorized in that behalf, otherwise he shall not be allowed so to do: Provided, that when any attorney shall claim to enter an appearance by virtue of a letter to him directed (whether such letter purport a general or a particular employment), and it shall be necessary for him to retain the letter in his own possession, he shall, on the production of said letter setting forth such employment, be allowed to enter his appearance, and the clerk shall make a note to that effect upon the docket.—Rev., 213.

1541. Failure to file complaint makes attorney liable for costs.—When a plaintiff shall be compelled to pay the costs of his suit in consequence of a failure on the part of his attorney to file his complaint in proper time, he may sue such attorney for all the costs by him so paid, and the receipt of the clerk may be given in evidence in support of such claim.—Rev., 214.

1542. Fraud renders liable for double damages.—If any attorney shall commit any fraudulent practice, he shall be liable in an action to the party injured, and on the verdict passing against him, judgment shall be given for the plaintiff to recover double damages.—Rev., 215.

4. Arguments.

1543. Control of, by court.—In all trials in the superior courts there shall be allowed two addresses to the jury for the state or plaintiff and two for the defendant, except in capital felonies, when there shall be no limit as to number. The judges of the superior court are also authorized to limit the time of argument on the trial of all actions, civil and criminal, except in capital felonies, but in no instance shall the time be limited to less than one hour on each side in misdemeanors, or to less than three hours on each side in other causes. Where any greater number of addresses or any extension of time shall be desired, motion shall be made, and it shall be in the discretion of the judge to allow the same or not, as the interests of justice may require. In jury trials the whole case as well of law as of fact may be argued to the jury.—Rev., 216.

CHAPTER VI.

AUCTIONEERS.

1544. How appointed.—Any citizen of the state, desiring to exercise the business of an auctioneer, shall apply to the board of county commissioners of the county in which he proposes to carry on such business, and, upon his giving bond payable to the state of North Carolina, to be approved by said commissioners or other authority, conditioned that he will perform faithfully all the duties required of auctioneers, the sheriff shall issue to him a license to act as an auctioneer in said county for twelve months from the date of the license. The bond shall in no case be less than five hundred dollars, and if the applicant reside in an incorporated town or city having not less than thirty-five hundred nor more than five thousand inhabitants, said bond shall be one thousand dollars, and one thousand dollars additional for every additional five thousand inhabitants or fraction thereof amounting to thirty-five hundred and above.—Rev., 217.

1545. Duties; semi-annual accounts.—It shall be the duty of such auctioneers, on the first days respectively of October and April, to render to the clerks of the superior court of their respective counties a true and particular account in writing of all the moneys made liable to duty by law, for which any goods, wares, or merchandise may have been sold at auction, and also at private sale, where the price of the goods, wares and merchandise sold at private sale was fixed or agreed upon or governed by any previous sale at auction, of any goods, wares and merchandise of the same kind; which account shall contain a statement of the gross amount of sales by them made for each particular person or company at one time, the date of each sale, the names of the owners of the goods, wares and merchandise sold, and the amount of the tax due thereon, which tax they shall pay as directed by law. Which statement shall be subscribed by them and sworn to before the clerk of the said court, who is hereby authorized to administer the oath. And it shall be their further duty to account with and pay to the person entitled thereto the moneys received on the sales by them made.—Rev., 218.

1546. Penalty, acting without appointment.—No person shall exercise the trade or business of an auctioneer, by selling any goods, wares or merchandise by auction or by any other mode of sale whereby the best or highest bidder is deemed to be the purchaser, unless such person shall be appointed an auctioneer pursuant to this chapter, on pain of forfeiting to the state for every such sale the sum of two hundred dollars, which shall be prosecuted to recovery by the solicitor of the district.—Rev., 219.

1547. To sales of what articles applicable.—Nothing in this chapter shall extend to any sale by auction of goods, wares and merchandise made pursuant to and in execution of any order, decree or judgment of the courts of the United States or of this state; or made in consequence of any assignment of property and estate for the benefit of creditors; or made by executors, administrators, collectors or guardians; or made pursuant to any law touching the collection of any tax or duty, or sale of any wrecked goods; or to any article the product of the agriculture of this state, in its natural or unmanufactured state; or to any species of stock or domestic animals; or to any articles of household furniture, or farming utensils which have been in use; but shall extend only to such articles of goods, wares and merchandise as are the ordinary subject of traffic and sale by merchants and traders.—Rev., 220.

1548. Commissions; pay one per cent to town.—Auctioneers shall be entitled to such compensation as may be agreed upon, not exceeding two and a half per cent on the amount of sales; and auctioneers of incorporated towns shall retain and pay one per cent of the gross amount of sales to the commissioners or other authority of their respective towns.—Rev., 221.

CHAPTER VII.

BASTARDY.

1549. Justices have jurisdiction; warrant issued only on complaint of woman or county commissioner.—Justices of the peace of the several counties shall have exclusive original jurisdiction to issue, try and determine all proceedings in cases of bastardy in their respective counties. A warrant in bastardy shall be issued only upon the voluntary affidavit and complaint of the mother of the bastard; or, upon the affidavit of one of the county commissioners, setting forth the fact that the bastard is likely to become a county charge.—Rev., 252.

A summons in bastardy proceedings, issued by one justice, may be made returnable before some other of the same county.—*Williams v. Bowling*, 111—295.

It is not proper to join the mother of a bastard child with the state in a proceeding to fix the paternity upon the putative father.—*State v. Collins*, 85—511.

It is optional with the mother whether she will institute proceedings against the father, even before the birth of the child. But if the child, after its birth, is likely to become a county charge, proceedings may be taken by a county commissioner.—*State v. Crouse*, 86—617.

1550. Procedure on complaint by county commissioner.—When complaint is made on affidavit by one of the county commissioners, as set forth in the preceding section, to any justice of the peace of the county in which the woman resides, that any single woman within his county is big with child, or delivered of a child, he may cause her to be brought before him, or any other justice of the peace of the county, to be examined upon oath respecting the father; and if she shall refuse to declare the father, she shall pay a fine of five dollars and give a bond payable to the state with sufficient surety to keep such child from being chargeable to the county, otherwise she shall be committed to prison until she shall declare the same or pay the fine aforesaid and give such bond.—*Rev.*, 253.

A married woman may swear a bastard, and the child shall be so adjudged, if the impotence or non-access of the husband is shown.—*State v. Petteway*, 10—623.

Impotence of the alleged father is a good defense; and the court in refusing to hear evidence of such impotence, existing at the time the child is charged to have been begotten, erred.—*State v. Broadway*, 69—411.

A proceeding under existing statutes upon the subject of bastardy is a criminal action, of which a justice of the peace has jurisdiction. Therefore, the defendant can not be twice put in jeopardy, and an acquittal by the justice of the peace is final and conclusive, and unreviewable upon appeal of the state or prosecutrix. The clause in section 32 of The Code, allowing an appeal by the "affiant or the woman," is unconstitutional.—*State v. Ostwalt*, 113—1208.

The enforcement of the payment of the costs, fine and allowance in bastardy cases is by virtue of the police power of the state, and therefore it is competent for a justice of the peace, under section 38 of The Code, to sentence one convicted of bastardy to the house of correction for such a period of time as will, according to the rate per month allowed by the county commissioners, cover the amount adjudged to be paid. But in no case can he be sentenced for a longer period than twelve months.—*State v. Nelson*, 119—797.

A defendant in bastardy proceedings is not allowed to take insolvent's oath without remaining in prison for twenty days.—*State v. Bryan*, 83—611.

When the defendant is discharged on taking the insolvent's oath the law as to cost in civil actions prevails, whereby the county for whose benefit the proceedings are instituted is liable for the costs of the state, but not for the solicitor's fees, nor for the allowance to the mother of a bastard, nor for the costs of the defendant.—*Ibid.*

On the trial of a prosecution for bastardy, evidence that the prosecutrix had criminal intercourse with another man about the time when in the course of nature the child must have been begotten, and that such intercourse was habitual, is admissible.—*State v. Britt*, 78—439.

Evidence that the child resembles its putative father is also admissible.—*Ibid.* See *State v. Parish*, 83—613.

A defendant convicted of bastardy may be discharged from imprisonment by complying with the provisions of the insolvent debtor's act.—*State v. White*, 125—674.

1551. Procedure when woman declares father.—If any woman shall, upon oath, accuse any man of being the father of her bastard child, the justice before whom such oath is made shall cause him to be brought before some justice of the peace of such county to answer the charge; and, if he shall, upon oath, deny that he is the father of such child, the justice shall proceed to try the issue of paternity, and if it shall be found that he is the father of the child, or if he shall not deny upon oath that he is the father of the child, then he shall stand charged with the maintenance thereof, as the court may order, and shall give bond, with sufficient surety, payable to the state, to perform said order, and to indemnify the county where such child shall be born from charges for his maintenance, and may be committed to prison until he finds surety for the same, and shall be liable for the costs of the issue or proceeding, and from this judgment and finding the affiant, the woman or the defendant may appeal to the next term of the superior court of the county where the trial is to be had *de novo*.—*Rev.*, 254.

1552. Procedure on appeal.—Upon the trial of the issue, whether before the justice or at term, the examination of the woman, taken and returned, shall be presumptive evidence against the person accused,

subject to be rebutted by other testimony which may be introduced by the defendant; and, if the jury at term shall find that the person accused is the father of the child, then the judge shall make the order for the maintenance and for costs of proceeding, and shall take bond from the defendant and his sureties for the maintenance of the child and to indemnify the county and pay the costs; and, in default thereof, may imprison the defendant.—Rev., 255.

1553. Putative father out of county.—If the putative father shall escape or be in any other county than that of the justice issuing the warrant, it shall be issued, endorsed, executed and returned as provided in warrants in criminal actions.—Rev., 256.

1554. Upon appeal parties and witnesses recognized.—When an appeal shall be taken the justice shall recognize the person accused of being the father of the child with sufficient surety for his appearance at the next term of the superior court for the county, and to abide by and perform the order of the court; said justice shall also recognize the woman and other witnesses to appear at said superior court, and shall return to said court the original papers in the proceeding and a transcript of his proceedings as required in other cases of appeal. If the putative father fail to appear, unless for good cause shown, the judge shall direct the issue of paternity to be tried; and if the issue be found against the person accused, he shall order a *capias* or attachment to be issued for the father, and may also enter up judgment against the father and his surety on his recognizance.—Rev., 257.

1555. Case may be continued till birth of child.—When the judge or justice, as the case may be, trying the issue of paternity, shall deem it proper, he may continue the case until the woman shall be delivered of the child; but when a continuance is granted, the court shall recognize the person accused of being the father of the child with surety for his appearance either at the next term of the court or at a time to be fixed by the justice granting the continuance, which shall be after the delivery of the woman.—Rev., 258.

1556. Fine, allowance and bond.—When the issue of paternity shall be found against the putative father, or when he admits the paternity, he shall be fined by the judge or justice not exceeding the sum of ten dollars and the court shall make an allowance to the woman not exceeding the sum of fifty dollars, to be paid in such instalments as the judge or justice shall see fit, and he shall give bond to indemnify the county as prescribed by law; and in default of such payment he shall be committed to prison.—Rev., 259.

1557. Action barred in three years after birth.—All examinations upon oath to charge any man with being the father of a bastard child shall be taken within three years next after the birth of the child, and not after.—Rev., 260.

1558. Execution may issue for maintenance.—When the judge or justice shall charge the father of a bastard child with its maintenance, and the father shall neglect to pay the same, then the judge or justice, upon application of the party aggrieved, notice being served on the defendant at least ten days before the return day stated in the notice, or such notice being returned by the sheriff or constable that the defendant is not to be found, may order an execution against the goods, chattels, lands and tenements of the father for such sum as the court shall adjudge sufficient for the maintenance of the bastard child.—Rev., 261.

1559. Putative father when committed or apprenticed.—In all cases arising under this chapter, when the putative father shall be charged with costs or the payment of money for the support of a bastard child, and such putative father shall, by law, be subject to be committed to

prison in default of paying the same, it shall be competent for the court to sentence such putative father to the house of correction for such time, not exceeding twelve months, as the court may deem proper: Provided, that such person or putative father, at his discretion, instead of being committed to prison or to the house of correction, may bind himself as an apprentice to any person whom he may select, for such time and at such price as the court may direct. The binding shall be by indenture in open court, and the price obtained shall be paid to the county treasurer. On the indenture being signed by the presiding judge of the court and by the master receiving such apprentice, the person thus bound shall be treated and regarded as an apprentice in all matters except education.—Rev., 262.

1560. Procedure for legitimating bastards.—The putative father of any illegitimate child may apply by petition in writing to the superior court of the county in which the father may reside, praying that such child may be declared legitimate; and if it shall appear that the petitioner is reputed the father of the child, the court may thereupon declare and pronounce the child legitimated; and the clerk shall record the decree.—Rev., 263.

1561. Effects of legitimation.—The effect of such legitimation shall extend no further than to impose upon the father all the obligations which fathers owe their lawful children, and to enable the child to inherit from the father only his real estate, and also to entitle such child to the personal estate of his father, in the same manner as if he had been born in lawful wedlock; and in case of death and intestacy, the real and personal estate of such child shall be transmitted and distributed according to the statute of descents and distribution among those who would be his heirs and next of kin in case he had been born in lawful wedlock.—Rev., 264.

CHAPTER VIII.

BONDS.

1. Mortgage in Lieu of.

1562. Fiduciary or official.—Any administrator, executor, guardian, collector or receiver, or any officer required to give an official bond, or the agent or surety of such person or officer, may execute a mortgage on real estate, of the value of the bond required to be given by such administrator, executor, guardian, collector, receiver or officer, to the state of North Carolina, conditioned to the same effect as the bond should be, were the same given, with a power of sale, which power of sale may be executed by the clerk of the superior court, with whom said mortgage shall be deposited, upon a breach of any of the conditions of said mortgage, after advertisement for thirty days.—Rev., 265.

1563. Appearance; security for costs or fine.—Any person required to give a bond or undertaking, or required to enter into a recognizance for his appearance at any court, in any criminal proceeding, or for the security of any costs or fine in any criminal action, may also execute a mortgage on real or personal property of the value of such bond or recognizance, payable to the state of North Carolina, conditioned as such bond or recognizance would be required, with power of sale, which power shall be executed by the clerk or justice of the peace in whose court said mortgage shall be executed, upon a breach of any of the conditions of said mortgage: Provided, that where such mortgage upon real property is executed before a justice of the peace the power of sale shall be enforced by the clerk of the court of the county

in which the criminal proceeding is had: And provided further, that no such mortgage on real property executed for the security for costs or fine shall allow a longer time for payment of said costs or fine than six months from the execution thereof, and no mortgage on personal property a longer time than three months, except in cases of appeal, when the time allowed shall be counted from the date of the final decision in the cause: And provided further, that all legitimate expenses of sale, which shall only be made after due advertisement according to law, shall be paid out of the proceeds of the sale of the mortgaged property, as shall also the following fees, to-wit: For each sale of real property mortgaged under this section the clerk shall receive two dollars, and for each sale of personal property mortgaged under this section the clerk or justice of the peace who enforces the power of sale shall receive one dollar.—Rev., 266.

1564. How cancelled; effect.—Any mortgage given by any person in lieu of bond or undertaking or recognizance for his appearance at any court in any criminal proceeding, or for the security of any cost or fine in a criminal action, which has been registered, when the party made his appearance at the court to which he was bound and did not depart the court without leave, or paid the cost or fine required, may be cancelled or discharged by the clerk of the court of the county where such action was pending by entry of "satisfaction" upon the margin of the record where such mortgage is recorded, in the presence of the register of deeds or his deputy, who shall subscribe his name as a witness thereto, and such release shall have the effect to discharge and release all the right, title and interest of the state of North Carolina in and to the property described in such mortgage.—Rev., 267.

1565. Clerk superior court; depository of.—In all cases where the clerk of the superior court may be required to give surety, he may deposit a mortgage with the register of deeds, payable to the state, and conditioned, as the bond would have been required, with power of sale. The power of sale shall be executed by the register of deeds, upon a breach of any of the conditions of said mortgage; and the register of deeds shall in all cases immediately register the same, at the expense of the said clerk.—Rev., 268.

1566. Prosecution.—It shall be lawful for any person desiring to commence any civil action or special proceeding, or to defend the same, his agent or surety, to execute a mortgage on real estate of the value of the bond or undertaking, required to be given at the beginning of said action, or at any stage thereof, to the party to whom the bond or undertaking would be required to be made, conditioned to the same effect as such bond or undertaking, with power of sale, which power of sale may be executed upon a breach of any of the conditions of the said mortgage after advertisement for thirty days.—Rev., 269.

1567. Affidavit of value of property required.—In all cases where a mortgage is executed, as hereinbefore permitted, it shall be the duty of the clerk of the court in which it is executed, or of the justice, to require an affidavit of the value of the property mortgaged to be made by at least one witness not interested in the matter, action or proceeding in which the mortgage is given.—Rev., 270.

1568. Additional security required, when.—If, from any cause, the property mortgaged in lieu of a bond shall become of less value than the amount of the bond in lieu of which the mortgage is given, and it shall so appear upon affidavit of any person having any interest in the matter as a security for which the mortgage was given, it shall be the duty of the mortgagor to give additional security by a deposit of money, or the execution of a mortgage on more property, or justify as required in cases where bond or undertaking is given.—Rev., 271.

2. In Surety Companies.

1569. By state officers.—All persons who are required to give bond to the state of North Carolina to be received by the governor or by any department of the state government shall, in lieu of personal security, be permitted to give as security for said bond and for the performance of the duties named in the said bond any indemnity or guaranty company authorized to do business in the state of North Carolina, subject to such regulations as the governor or department may prescribe, and with power in them to demand additional security at any time. Any person presenting any indemnity or guaranty company as surety shall accompany his bond with a statement of the insurance commissioner as to the condition of such company as required in this Revisal.—Rev., 272.

Note.—For certificate of solvency and insolvency, see ss. 4802, 4803 of the Revisal.

1570. Municipal officers; fiduciaries; litigants, etc.—Whenever, by the law of North Carolina, or by the regulation of any board, body or organization in this state, any bond, recognizance, obligation or undertaking is required of, permitted to be made, given, tendered or filed by any sheriff, clerk of a court, register of deeds, tax collector, treasurer, constable or coroner, mayor, clerk, policeman, weigher or standard keeper of any county, city, town or township in this state, or by any trustee, receiver, guardian, administrator, executor, assignee, or any other fiduciary, or party to a civil action or proceeding, either for the prosecution thereof or for any other purpose whatsoever in the course of the action, or by any officer of any town or city, conditioned for the doing or not doing of anything, in such bond, recognizance, obligation or undertaking specified, any and all clerks of the superior courts, municipal officers, boards, courts and judges, now or hereafter permitted to accept, approve or pass upon the sufficiency of such bond, recognizance, obligation or undertaking shall accept such bond, recognizance, obligation or undertaking, and approve the same, whenever the same is executed or the conditions thereof are guaranteed by a corporation of this or any other state licensed in this state, which corporation under its charter is authorized to act as guardian or other trustee, or to guarantee the fidelity of any persons holding places of public and private trusts, and to guarantee the performance of contracts, other than insurance policies, and to execute and guarantee bonds and undertakings required or permitted in actions or proceedings, as by law allowed. Whenever such bond, recognizance, obligation or undertaking is so required or permitted to be made, given, tendered or filed with one surety, or with two or more sureties, the execution of the same, or the guaranteeing of the performance of the condition thereof, shall be sufficient when executed or guaranteed solely by such company so authorized, and shall be in all respects a full and complete compliance with every requirement of every law, rule and regulation that such bond, recognizance, obligation or undertaking shall be executed by one surety or two sureties, and that such surety or sureties shall be residents or freeholders. and such bond, recognizance, obligation or undertaking shall be accepted and approved when executed by such company: Provided, the clerk of the superior court may have discretion as to the acceptance of any bond on which said company or companies may become sureties on the bonds of guardians, executors, administrators, assignees, or other fiduciary or any other party to a civil action or proceeding.—Rev., 273.

1571. How released from liability.—Any company executing such bond, obligation or undertaking may be released from its liability or security on the same terms as are or may be by law prescribed for the release of individuals upon any such bonds, obligations or undertakings.—Rev., 274.

1572. Estoppel to plead ultra vires; penalty failure to pay judgment.—Any company which shall execute any bond, obligation or undertaking under the provisions of this subchapter shall be estopped in any proceeding to enforce the liability which it shall assume to incur, to deny its corporate power to execute such instrument or assume such liability. If any surety company against which a judgment shall have been recovered shall fail to discharge the same within sixty days from time such final judgment is rendered, it shall forfeit its right to do business in this state, and the insurance commissioner shall cancel its license.—Rev., 275.

1573. When accepted and officer inducted.—Upon presentation to the person authorized by law to take, accept and file official bonds, of any bond duly executed in the penal sum required by law by the officer chosen to any such office, as principal, and by any surety company as security thereto, whose insurance or guaranty is accepted as security upon the bonds of United States bonded officials (such insurance company having complied with the insurance laws of the state of North Carolina), or by any other good and sufficient security thereto, such bond shall be received and accepted as sufficient, and the principal thereon shall be inducted into office.—Rev., 276.

1574. Expense of fiduciary bond charged to fund.—Any receiver, assignee, trustee, committee, guardian, executor or administrator, or other fiduciary required by law to give a bond as such, may include as part of his lawful expenses such sums paid to such companies for such suretyship not exceeding one-half of one per cent per annum on the account of such bonds as the clerk, judge or court may allow.—Rev., 277.

Note.—For requisites for surety companies to be accepted as bondsmen, see Insurance.

3. Officer Acting Without.

1575. Penalty for.—Every person or officer of whom an official bond is required, who shall presume to discharge any duty of his office before executing such bond in the manner prescribed by law, is liable to a forfeiture of five hundred dollars to the use of the state for each attempt so to exercise his office.—Rev., 278.

4. Irregularity.

1576. Informal taking, not to invalidate.—Whenever any instrument shall be taken by or received under the sanction of the board of county commissioners, or by any person or persons acting under or in virtue of any public authority, purporting to be a bond executed to the state for the performance of any duty belonging to any office or appointment, such instrument, notwithstanding any irregularity or invalidity in the conferring of the office or making of the appointment, or any variance in the penalty or condition of the instrument from the provision prescribed by law, shall be valid and may be put in suit in the name of the state for the benefit of the person injured by a breach of the condition thereof, in the same manner as if the office had been duly conferred or the appointment duly made, and as if the penalty and condition of the instrument had conformed to the provisions of law: Provided, that no action shall be sustained thereon because of a breach of any condition thereof or any part of the condition thereof which is contrary to law.—Rev., 279.

5. Actions on.

1577. Taken in judicial proceedings brought in name of state.—Bonds and other obligations taken in the course of any proceeding in law, under the direction of the court, and payable to any clerk, commissioner, or officer of the court, for the benefit of the suitors in the cause, or others having an interest in such obligation, may be put in suit in the name of the state.—Rev., 280.

1578. Official bonds, relator; successive suits.—Every person injured by the neglect, misconduct, misbehaviour in office of any clerk of the superior court, register, entry-taker, surveyor, sheriff, coroner, constable, county treasurer, or other officer, may institute a suit or suits against said officer or any of them and their sureties upon their respective bonds for the due performance of their duties in office in the name of the state, without any assignment thereof; and no such bond shall become void upon the first recovery, or if judgment shall be given for the defendant, but may be put in suit and prosecuted from time to time until the whole penalty shall be recovered, and every such officer, and the sureties on his official bond, shall be liable to the person injured for all acts done by said officer by virtue or under color of his office.—Rev., 281.

1579. Complaint must show party in interest; may sue officer individually.—Any person who may bring suit in manner aforesaid shall state in his complaint on whose relation and in whose behalf the suit is brought, and he shall be entitled to receive to his own use the money recovered; and nothing herein contained shall prevent such person from bringing at his election an action against the officer to recover special damages for his injury.—Rev., 282.

1580. Summary remedy on official bond.—Whenever a sheriff, coroner, constable, clerk, county or town treasurer, or other officer, shall have collected or received any money by virtue or under color of his office, and on demand shall fail to pay the same to the person entitled to require the payment thereof, the person thereby aggrieved may move for judgment in the superior court against such officer and his sureties for any sum demanded; and the court shall try the same and render judgment at the term when the motion shall be made, but ten days notice in writing of the motion must have been previously given.—Rev. 283.

1581. Damages against officers for money unlawfully detained.—Whenever money received as aforesaid shall be unlawfully detained by any of said officers, and the same shall be sued for in any mode whatever, the plaintiff shall be entitled to recover, besides the sum detained, damages at the rate of twelve per centum per annum from the time of detention until payment.—Rev., 284.

1582. Evidence against principal admissible against sureties.—In actions brought upon the official bonds of clerks of courts, sheriffs, coroners, constables, or other public officers, and also upon the bonds of executors, administrators, collectors or guardians, when it may be necessary for the plaintiff to prove any default of the principal obligors, any receipt or acknowledgment of such obligors, or any other matter or thing which, by law would be admissible and competent for or toward proving the same as against him, shall in like manner be admissible and competent as presumptive evidence only against all or any of his sureties who may be defendants with or without him in said actions.—Rev., 285.

1583. Officer liable for the debt, when.—When a claim shall be placed in the hands of any sheriff, coroner or constable for collection, and he shall not use due diligence in collecting the same, he shall be liable for the full amount of the claim notwithstanding the debtor may have been at all times and is then able to pay the amount thereof.—Rev., 286.

7. County Officers.

1584. Clerk of superior court.—At the first meeting of the board of commissioners of each county after the election or appointment of any clerk of a superior court it shall be the duty of the clerk to deliver to such commissioners a bond with sufficient sureties, to be approved by them, in a penalty of not less than ten thousand dollars, and not more

than fifteen thousand dollars, payable to the state of North Carolina, and with a condition to be void if he shall account for, and pay over, according to law, all moneys and effects which have come or may come into his hands, by virtue or color of his office, or under an order or decree of a judge, even though such order or decree be void for want of jurisdiction or other irregularities, and shall diligently preserve and take care of all books, records, papers and property which have come or may come into his possession by virtue or color of his office, and shall in all things faithfully perform the duties of his office as they are, or thereafter shall be, prescribed by law: Provided, that the bonds of the clerks of the superior courts of Pamlico and Carteret counties may be fixed at an amount not less than five thousand dollars, in the discretion of the county commissioners. Each clerk of the superior court shall furnish the chairman of the board of county commissioners of his county with all notifications furnished him in compliance with section four thousand eight hundred and three of this Revisal concerning any company in which any officer of the county is bonded.—Rev., 295; Laws 1907, c. 103.

For special act as to Currituck County, see Laws 1907, c. 990.

The sureties on the bond of a clerk are not responsible for funds which come into his hands as receiver and over which the court had no control, but they are responsible where the clerk is appointed receiver under the statute authorizing the court to commit the estate of an infant to "some discreet person."—*Rogers v. Odum*, 86—432.

The sureties on the official bond of a clerk of the superior court are liable for any loss resulting from his failure to docket a judgment when he should do so.—*Young v. Connelly*, 112—646.

1585. Clerk's bond, how approved; where deposited.—The approval of said bond by the board of commissioners, or a majority of them, shall be recorded by their clerk. The said bond shall be acknowledged by the parties thereto, or proved by a subscribing witness, before the clerk of said board of commissioners, or their presiding officer, registered in the register's office in a separate book to be kept by him for the registration of official bonds; and the original, with the approval thereof endorsed, deposited with the register for safe keeping. The like remedies shall be had upon said bond as are or may be given by law on official bonds.—Rev., 296.

1586. County treasurer; penalty; when renewed.—The county treasurer, before entering upon the duties of his office, shall give bond with three or more sufficient sureties, to be approved by the board of commissioners, payable to the state, conditioned that he will faithfully execute the duties of his office, and pay according to law, and on the warrant of the chairman of the board of commissioners, all moneys which shall come into his hands as treasurer, and render a just and true account thereof to the board when required by law, or by the board of commissioners. The penalty of his bond shall be a sum not exceeding the amount of the county and local taxes assessed during the previous year, and the board of commissioners at any time, by an order, may require him to renew, increase or strengthen his bond. A failure to do so within ten days after the service of such order shall vacate his office and the board shall appoint a successor: Provided, the board of commissioners may fix the bond of the treasurer of Forsyth County at such sum as they may deem best, not less than twenty thousand dollars, and may increase it at any time; and in Craven County the bond of the treasurer shall be equal to the county funds during the preceding year, but not to exceed forty thousand dollars.—Rev., 297.

1587. Sheriff; number; penalty; form.—The sheriff shall execute three several bonds, payable to the state of North Carolina, as follows: One conditioned for the collection and settlement of state taxes according to law, a sum not exceeding the amount of the taxes assessed upon the county for state purposes in the previous year; one conditioned for the collection and settlement of county and other local taxes according

to law, a sum not exceeding the amount of such county and other local taxes for the previous year. Every sheriff shall deposit the county and other local taxes, by him collected, with the county treasurer, if there be a county treasurer, as often as he shall collect or have in his possession at any one time of such county or local taxes, a sum equal to five hundred dollars. The amount of the third bond, for the due execution and return of process, payment of fees and moneys collected, and the faithful execution of his office as sheriff, shall be not more than five thousand dollars, in the discretion of the board of county commissioners, and shall be conditioned as follows:

"The condition of the above obligation is such, that whereas, the above bounden is elected and appointed sheriff of county; if, therefore, he shall well and truly execute and due return make of all process and precepts, to him directed, and pay and satisfy all fees and sums of money, by him received or levied by virtue of any process, into the proper office into which the same, by the tenor thereof, ought to be paid, or to the person or persons to whom the same shall be due, his, her or their executors, administrators, attorneys, or agents; and in all other things well, truly and faithfully execute the said office of sheriff, during his continuance therein, then the above obligation to be void; otherwise to remain in full force and effect."

Provided, the bonds of the sheriff of Craven County shall be as follows: One conditioned for the collection, payment and settlement of the county, poor, school and special taxes in a sum double the amount of said taxes for the previous year; one for the collection, payment and settlement of the public taxes as required by law in a sum double the amount of said taxes for the previous year: Provided, that the aggregate amount of said two bonds shall not be required to exceed the sum of forty thousand dollars. And the amount of the third bond for the due execution and return of process, payment of fees and moneys collected and the faithful execution of his office as sheriff shall not be less than five thousand dollars and no more than fifteen thousand dollars, in the discretion of the board of county commissioners; and whenever and as often as the sheriff shall have collected of the county, school or other local and special taxes a sum equal in amount to three hundred dollars he shall immediately pay the same to the treasurer of the county.—Rev., 298.

1588. Coroner; penalty; oath of office.—Every coroner shall execute an undertaking for the faithful discharge of the duties of his office with good surety, in the sum of two thousand dollars, payable to the state of North Carolina and approved by the board of county commissioners.—Rev., 299.

1589. Coroners' bonds registered.—All official bonds of coroners shall be duly proved, certified, registered and filed as sheriffs' bonds are required to be; and certified copies of the same, from the register's office, shall be received and read in evidence in the like cases and in like manner as such copies of sheriffs' bonds are now allowed to be read in evidence.—Rev., 300.

1590. Register of deeds.—Every register of deeds shall give bond with sufficient surety, to be approved by the board of county commissioners, in a sum not exceeding ten thousand dollars, payable to the state, and conditioned for the safe keeping of the books and records, and for the faithful discharge of the duties of his office, and shall renew his bond annually on the first Monday in December.—Rev., 301.

1591. Constable, where registered; fees, how paid.—The board of commissioners of each county shall require of each constable, elected or appointed for a township, on entering upon the duties of his office, to give a bond with good surety, payable to the state of North Carolina, in a sum not exceeding one thousand dollars, conditioned as well for

the faithful discharge of his duty as constable, as for his diligently endeavoring to collect all claims put into his hands for collection, and faithfully paying over all sums thereon received, either with or without suit, unto the persons to whom the same may be due. Said bond shall be duly proved and registered, and after registration, filed in the office of the register of deeds; and certified copies of the same from the register's office shall be received and read in evidence in all actions and proceedings where the original might be. The fees for proving and registering the bond of constable shall be paid by the constable. In Stanly County the fees shall be paid by the county.—Rev., 302.

1592. County surveyor.—The county surveyor of each county shall enter into bond in the sum of one thousand dollars, payable to the state of North Carolina, with sufficient surety, for the faithful discharge of the duties of his office.—Rev., 303.

1593. Entry-taker.—Every entry-taker shall enter into bond in the sum of five hundred dollars, payable to the state, with sufficient security to be approved by the county commissioners, for the faithful discharge of the duties of his office.—Rev., 304.

1594. Wreck commissioner.—Every person appointed a wreck commissioner shall enter into a bond, with good and sufficient surety, in the sum of two thousand dollars, payable to the state of North Carolina and conditioned for the faithful performance of his duties, which shall be approved by the board of county commissioners and deposited in the office of the clerk of the superior court.—Rev., 305.

1595. Standard-keeper.—The person elected as standard-keeper of any county shall give bond, with good and sufficient surety, payable to the state of North Carolina, in the sum of two hundred dollars, conditioned for the safe keeping of weights and measures, stamps and brands of said county, and for the faithful performance of the duties of his office.—Rev., 306.

8. Pilots.

1596. Pilot; may be enlarged; where filed.—Every person, before he obtains a commission or a branch to be a pilot, shall give bond with two sufficient sureties payable to the state of North Carolina, in the sum of five hundred dollars, with condition for the due and faithful discharge of his duties, and the duties of his apprentices; and the body appointing such pilot may, from time to time, and as often as they may deem it necessary, enlarge the penalty of the bond, or require new and additional bonds to be given; and every bond taken of a pilot shall be filed with, and preserved by, the said body appointing such pilot in trust for every person that shall be injured by the neglect or misconduct of such pilot, or his apprentices; who may severally bring suit thereon for the damage by each one sustained.—Rev., 307.

9. Duty of County Commissioners.

1597. County officials' bonds; term of; examined annually; increased when.—Every clerk, treasurer, sheriff, coroner, register of deeds, surveyor, and every other officer of the several counties who is required by law to give a bond for the faithful performance of the duties of his office, shall give a bond for the term of the office to which such officers are chosen, respectively. The bonds shall be carefully examined on the first Monday in December of every year, and if it shall appear that the security has been impaired, or for any cause become insufficient to cover the amount of money or property or to secure the faithful performance of the duties of the office, then the bond shall be renewed or strengthened, the insufficient security increased within the limits herein prescribed, and the impaired shall be made good; but no renewal, or

strengthening, or additional security shall increase the penalty of said bond beyond the limits herein prescribed for the term of office.—Rev., 308.

1598. Vacancy declared on failure to renew bond.—Upon the failure of any such officer to make renewal of his bond, it is the duty of the board of commissioners, by an order to be entered of record, to declare his office vacant, and to proceed forthwith to appoint a successor, if the power of filling the vacancy in the particular case be vested in the board of commissioners; but if otherwise, the said board shall immediately inform the proper person having the power of appointment of the fact of such vacancy.—Rev., 309.

1599. Justification of surety on official.—Every surety on an official bond required by law to be taken or renewed and approved by the board of commissioners, shall take and subscribe an oath before the chairman of the board or some person authorized by law to administer an oath, that he is worth a certain sum (which shall be not less than one thousand dollars) over and above all his debts and liabilities and his homestead and personal property exemptions, and the sum thus sworn to shall in no case be less in the aggregate than the penalty of the bond. But nothing herein shall be construed to abridge the power of the said board of commissioners to require the personal presence of any such surety before the board when the bond is offered, or at such subsequent time as the board may fix for examination as to his financial condition or other qualifications as surety.—Rev., 310.

1600. County commissioners to approve bonds; custody; how acknowledged.—The approval of all official bonds taken or renewed by the board of commissioners shall be recorded by their clerk. Every such bond shall be acknowledged by the parties thereto or proved by a subscribing witness, before the chairman of the board of commissioners, or before the clerk of the superior court, registered in the register's office in a separate book to be kept for the registration of official bonds, and the original bond, with the approval of the commissioners endorsed thereon and certified by their chairman, shall be deposited with the clerk of the superior court, except the bond of said clerk, which shall be deposited with the register of deeds for safe keeping.—Rev., 311.

1601. Clerk of board to record yeas and nays on approval; penalty for failure.—It is the duty of the clerk of the board of commissioners to record in the proceedings of the board the names of those commissioners who are present at the time of the approval of any official bond, and who shall vote for such approval, and every clerk neglecting to make such record, beside other punishment, shall forfeit his office. Any commissioner may cause his written dissent to be entered on the records of the board.—Rev., 312.

1602. Commissioner liable as surety, when.—Every commissioner who approves an official bond, which he knows to be, or which by reasonable diligence he could have discovered to have been, insufficient in the penal sum, or in the security thereto, shall be liable as if he were a surety thereto, and may be sued accordingly by any person having a cause of action on said bond.—Rev., 313.

1603. Record of board conclusive evidence of facts stated therein on prosecution.—In all actions under the preceding section, a copy of the proceedings of the board of commissioners in the particular case, certified by their clerk under his hand and seal of the county, shall be conclusive evidence of the facts in such record alleged and set forth.—Rev., 314.

1604. Commissioners can not be sureties where they may approve.—No member of the board of commissioners, or any other person author-

ized to take official bonds, shall sign as surety on any official bond, upon the sufficiency of which the board of which he is a member may have to pass.—Rev., 315:

10. Duty Superior Court Judge.

1605. Official bond insufficient, new one required; office vacated for failure; successor appointed.—Whenever oath shall be made before any judge of the superior court by five respectable citizens of any county within his district that after diligent inquiry made they verily believe that the bond of any officer of such county, which has been accepted by the board of commissioners, is insufficient either in the amount of the penalty or in the ability of the sureties, it shall be the duty of such judge to cause a notice to be served upon such officer requiring him to appear at some stated time and place and justify his bond by evidence other than that of himself or his sureties. And if this evidence so produced shall fail to satisfy the judge that the bond is sufficient, both in amount and the ability of the sureties, he shall give time to the officer, not exceeding twenty days, to give another bond, the judge fixing the amount of the new bond, when there is a deficiency in that particular. And upon failure to give a good bond to the satisfaction of the judge within the twenty days, he shall declare the office vacant, and if the appointment be with himself, he shall immediately proceed to fill the vacancy; and if not, he shall notify the persons having the appointing power that they may proceed as aforesaid.—Rev., 316.

1606. Appointee to give bond; official bonds, liabilities.—The person so appointed shall give bond before the judge, and the bond so given shall in all respects be subject to the requirements of the law in relation to official bonds; and all official bonds shall be considered debts and liabilities.—Rev., 317.

1607. Judge to file statement of proceedings with commissioners.—Whenever a vacancy shall be declared by the judge, he shall file a written statement of all his proceedings with the clerk of the board of commissioners to be recorded by him.—Rev., 318.

10. Fiduciaries.

1608. Executors, administrators or collectors; penalty; condition.—Every executor from whom a bond is required by law, and every administrator and collector, before letters are issued, must give a bond, payable to the state, with two or more sufficient sureties, to be justified before and approved by the clerk, conditioned that such executor, administrator or collector shall faithfully execute the trust reposed in him and obey all lawful orders of the clerk or other court touching the administration of the estate committed to him. The penalty of such bond must be at least double the value of all the personal property of the deceased; such value to be ascertained by the clerk by examination on oath of the applicant or of some other competent person: Provided, that if the personal property of any decedent shall be insufficient to pay his debts and the charges of administration, and it shall become necessary for his executor or administrator to apply for the sale of real estate for assets, and the bond previously given is not double the value of both the real and personal estate of the deceased, such executor (if bond is required of him by law) or administrator shall, before or at the time of filing his petition for such sale, give another bond, payable and conditioned as the one above prescribed and with like security, in double the value of the real estate for the sale of which application shall be made.—Rev., 319.

Note.—See Administration, s. 1354.

1609. Public administrator.—The public administrator shall enter into bond, with three or more sureties, approved by the clerk, in the penal sum of eight thousand dollars, payable to the state of North

Carolina, conditioned faithfully to perform the duties of his office, and obey all lawful orders of the clerk or other court touching the administration of the several estates that may come into his hands, and such bond shall be renewed every two years. Whenever the aggregate value of the real and personal property belonging to the several estates in the hands of the public administrator shall exceed the one-half of his bond, the clerk shall require him to enlarge his bond in amount so as to cover, at all times, at least the double of such aggregate.—Rev., 320.

Note.—See Administration, s. 1344.

1610. Public guardian.—The public guardian shall enter into bond with three or more sureties, approved by the clerk of the superior court, in the penal sum of six thousand dollars, payable to the state of North Carolina, conditioned faithfully to perform the duties of his office and obey all lawful orders of the superior or other courts touching said guardianship of all wards, money or estate that may come into his hands.—Rev., 321.

1611. Public guardian's bond enlarged.—Whenever the aggregate value of the real and personal estate belonging to his several wards shall exceed one-half the bond herein required, the clerk of the superior court shall require him to enlarge his bond in amount so as to cover at least double the aggregate amount under his control as guardian.—Rev., 322.

1612. Guardian to give bond; condition.—Every guardian of an estate, before letters of appointment are issued to him, must give a bond payable to the state, with two or more sufficient sureties, to be acknowledged before and approved by the clerk of the superior court, and to be jointly and severally bound. The penalty in such bond must be double, at least, the value of all personal property, and the rents and profits issuing from the real estate of the infant; which value is to be ascertained by the clerk of the superior court by the examination, on oath, of the applicant for guardianship, or of any other person. The bond must be conditioned that such guardian shall faithfully execute the trust reposed in him as such, and obey all lawful orders of the clerk or judge, touching the guardianship of the estate committed to him: Provided, if on application by the guardian by petition the court or judge shall decree a sale for any of the causes set forth in section one thousand seven hundred and ninety-eight of the property of such infant, idiot, lunatic or insane person, before such sale be confirmed, the guardian shall be required to file a bond as now required in double the amount of the real property so sold.—Rev., 323.

1613. Guardian to renew bond every three years.—Every guardian shall renew his bond before the clerk of the superior court every three years during the continuance of the guardianship.—Rev., 324.

CHAPTER IX.

BOUNDARIES.

1614. May be established by special proceeding.—The owner of land, any of whose boundary lines are in dispute, may establish any of such lines by special proceedings in the superior court of the county in which the land or any part thereof is situated.—Rev., 325.

1615. Procedure for establishing.—The owner shall file his petition under oath stating therein facts sufficient to constitute the location of such line as claimed by him and making defendants all adjoining owners whose interest may be affected by the location of said line.

The clerk shall thereupon issue summons to the defendants as in other cases of special proceedings. If the defendants fail to answer, judgment shall be given establishing the line according to petition. If the answer deny the location set out in the petition, the clerk shall issue an order to the county surveyor or, if cause shown, to any competent surveyor to survey said line or lines according to the contention of both parties, and make report of the same with a map at a time to be fixed by the clerk, not more than thirty days from date of order; to which time the cause shall be continued. The cause shall then be heard by the clerk upon the location of said line or lines and judgment given determining the location thereof: Provided, that either party may within ten days after such determination by the clerk serve notice of appeal from the ruling of the clerk determining the said location. When notice of appeal is served it shall be the duty of the clerk to transmit the issues raised before him to the next term of the superior court of the county for trial by a jury, when the question shall be heard *de novo*. When final judgment is given in this proceeding the court shall issue an order to the said surveyor to run and mark said line or lines as determined in the judgment. The surveyor shall make report, including a map of the line as determined, which shall be filed with the judgment roll in the cause and entered with the judgment on the special proceedings docket. The procedure under this chapter, the jurisdiction of the court, and the right of appeal shall, in all respects, be the same as in special proceedings except as herein modified. The occupation of land shall constitute sufficient ownership for the purposes of this chapter.—Rev., 326.

CHAPTER X.

BURNT AND LOST RECORDS.

1616. Certified copies of destroyed records received in evidence.—

Whenever the office of any registry shall have been, or may be destroyed by fire or other accident, and the records and other papers thereof be burnt or destroyed, the copies of all such proceedings, instruments and papers as are of record or registry, certified by the proper officer, though without the seal of office, shall be received in evidence whenever the original or duly certified exemplifications would be. Such copies, when the court shall be satisfied of their genuineness, may be ordered to be recorded or registered.—Rev., 327.

1617. Original papers may be again recorded; survey may be made by petition before clerk.—All original papers, once admitted to record or registry, whereof the record or registry is destroyed, may, on motion, be again recorded or registered, on such proof as the court shall require. Whenever any conveyance of real estate, or any right or interest therein, shall have been lost, the registry thereof being also destroyed, any person claiming under the same may cause the boundaries thereof to be established in the manner provided for in chapter ten, or he may proceed in the following manner to establish both the boundaries and nature of his estate: He shall file his petition before the clerk of the superior court, setting forth the location and boundaries of his land, whose land it adjoins, and the estate claimed therein, and praying to have his own boundaries established, and the nature of his estate declared. All persons claiming any estate in the premises, and those whose lands adjoin, shall be notified of the proceedings, and thereupon, unless they or some of them shall, by answer on oath, deny the truth of the matters alleged, or some of them, the clerk of the superior court shall order a surveyor to run and designate the boundaries of the petitioner's land, return his survey, with the plot thereof, to court,

which, when confirmed, shall, with the declaration of the court as to the nature of the estate of the petitioner, be registered and have, as to the persons notified, the effect of a deed for the same, executed by the person possessed of the same, next before the petitioner: Provided, that in all cases wherein the process of surveying shall be disputed, and the surveyor shall be forbidden to proceed by any person interested, the same proceedings shall be had as under chapter ten. The petitioner shall set forth the whole substance of the conveyance as truly and specifically as he can, and if any of the persons notified shall, by answer, deny the truth thereof, the clerk of the superior court shall transfer the issues of fact to the superior court at term, to be tried as other issues of fact are required by law to be tried, and on their verdict and the pleadings, the judge shall adjudge the rights of the parties, and declare the contents of the deed, if any deed be found by the jury, and allow the registration of such judgment and declaration, which shall have the force and effect of a deed.—Rev., 328.

1618. Copies of lost wills may be admitted to probate.—In all counties where the original wills on file in the office of the clerk of superior court, and will-books containing copies, have been or may be lost or destroyed, if the executor or any other person has preserved a copy of a will (the original being so lost or destroyed) with a certificate appended, signed by a clerk of the court in whose office the will was, or is required to be filed, and stating that said copy is a correct one, such copy may be admitted to probate, under the same rules and in the same manner as now prescribed by law for proving wills; and the proceedings in such cases shall be the same as though such copy was the original offered for the first time for probate, except that the clerk who signed such certificate shall, on oath, acknowledge his signature, or in case it shall appear that said clerk has died or left the state, then his signature shall be proven by a competent witness; and the witness or witnesses to the original, who may be examined, shall be required to swear that he or they signed in the presence of the testator and by his direction a paper writing purporting to be his last will and testament.—Rev., 329.

1619. Certified copy of will evidence; letters testamentary granted.—In any action or proceeding at law, wherein it may become necessary to introduce such will to establish title, or for any other purpose, a copy of the will and of the record of the probate, with a certificate signed by the clerk of the superior court for the county where the will may be recorded, stating that said record and copy are full and correct, shall be admitted as competent evidence; and when a copy of a will shall have been admitted to probate, the clerk of the superior court shall thereupon issue letters testamentary.—Rev., 330.

1620. Contents of destroyed will proved on petition before clerk.—Any person desirous of establishing the contents of a will destroyed as aforesaid, there being no copy thereof, may file his petition in the office of the clerk of the superior court, setting forth the entire contents thereof, according to the best of his knowledge, information and belief, and all persons having an interest under the same shall be made parties, and if the truth of such petition be denied, the issues of fact shall be transferred to the superior court at term for trial by a jury, whether the will was recorded, and if so recorded, the contents thereof, and the declarations of the judge, shall be recorded as the will of the testator. Any devisee or legatee shall be a competent witness as to the contents of every part of said will, except such as may concern his own interest in the same.—Rev., 331.

1621. Destroyed judgments and proceedings perpetuated by petition in court having original jurisdiction.—Every person desirous of perpetuating the contents of any destroyed judgments, orders or proceed-

ings of court, or any paper admitted to record or registration, or directed to be filed for safe keeping, other than wills or conveyances of real estate, or some right or interest therein, or any deed or other instrument of writing, required to be recorded or registered but not having been recorded or registered, it being competent to register or record said deed or other instrument at the time of its loss or destruction, may file his petition in the court having jurisdiction of like matters with the original proceeding, setting forth the substance of the whole record, deed, proceeding, or paper, which he desires to perpetuate, and if, on the hearing, the court shall declare the existence of such record, deed, or proceeding, or paper at the time of the burning of the office wherein the same was lodged or kept, or other destruction thereof, and that the same was there destroyed, and shall declare the contents thereof, such declaration shall be recorded or registered, or filed, according to the nature of the paper destroyed.—Rev., 332.

1622. Color of title, how determined.—Every person who shall have been in the continual, peaceable and quiet possession of land, tenements, or hereditaments, situated in the county, claiming, using and occupying them as his own, for the space of seven years, under known boundaries, the title thereto being out of the state, shall be deemed to have been lawfully possessed, under color of title, of such estate therein as has been claimed by him during his possession, although he may exhibit no conveyance therefor: Provided, that such possession shall have commenced before the destruction of the registry office, or other destruction as aforesaid, and also that any such person, or any person claiming by, through or under him, will make affidavit and produce such proof as shall be satisfactory to the court that the possession was rightfully taken; and if taken under a written conveyance, that the registry thereof was destroyed by fire or other means, or was destroyed before registry as aforesaid, and that neither the original, nor any copy thereof, is in existence: Provided further, that such presumption shall not arise against infants, persons of nonsane memory, and persons residing out of the state, who were such at the time of possession taken, and were not therefore barred, nor were so barred at the time of the burning of the office or other destruction.—Rev., 333.

1623. Action on destroyed official bonds.—Actions on official or other bonds lodged in any office which are destroyed with the registry thereof, may be prosecuted by petition against the principal and sureties thereto, and the proceedings shall be as in the former courts of equity.—Rev., 334.

1624. Witness tickets destroyed, others filed.—The court having jurisdiction of the action may allow other witness tickets to be filed in place of such as may be destroyed, upon the oath of the witness or other satisfactory proof.—Rev., 335.

1625. Lost conveyances, how replaced.—Where any conveyance executed by any person, sheriff, clerk and master, or commissioner of court has been lost, and registry thereof destroyed as aforesaid, and there is no copy thereof, such persons, whether in or out of office, may execute another of like tenor and date, reciting therein that the same is a duplicate, and such deed shall be evidence of the facts therein recited, in all cases wherein the parties thereto are dead, or are incompetent witnesses to prove the same, to the extent as if it was the original conveyance.—Rev., 336.

1626. Records of courts admissible to prove contents of deeds, wills, etc.—The records of any court in or out of the state, and all transcript of such records, and the exhibits filed therewith in any case, shall be admissible to prove the existence and contents of all deeds, wills, conveyances, depositions and other papers, copies whereof are therein set forth or exhibited in all cases where the records and registry of such

as were or ought to have been recorded and registered, or the originals of such as were not proper to be recorded or registered, have been destroyed as aforesaid, although such transcripts or exhibits may have been informally certified; and when offered in evidence shall have the like effect as though the transcript or record was the record of the court whose records are destroyed, and the deeds, wills and conveyances, depositions and other papers therein copied or therewith exhibited, were original.—Rev., 337.

1627. Copies of deeds, etc., mentioned in preceding section may be registered.—The copies aforesaid of all such deeds, wills, conveyances and other instruments proper to be recorded or registered, as are mentioned in the preceding section, may be recorded or registered on application to the clerk of the superior court, and due proof that the original thereof was genuine.—Rev., 338.

1628. Rules for petitions under this chapter.—The following rules shall be observed in petitions and motions under this chapter: The facts stated in every petition or motion shall be verified by affidavit of the petitioner that they are true according to the best of his knowledge, information and belief; the instrument or paper sought to be established by any petition shall be fully set forth in its substance, and its precise language shall be stated when the same is remembered. All persons interested in the prayers of the petition or decree shall be made parties. Petitions to establish a record of any court shall be filed at term in the superior court of the county where the record is sought to be established. Other petitions may be filed in the office of the clerk of the superior court. The costs of every action under this chapter shall be paid as the court may decree. Appeals shall be allowed as in all other cases, and where the error alleged be an erroneous finding by the superior court at term, of a matter of fact, the same may be removed on appeal to the supreme court, and the proper judgments directed to be entered below. And it shall be presumed that any order or record of the court of pleas and quarter sessions, which was made and has been lost or destroyed, was made by a legally constituted court, and the requisite number of justices, without naming said justices.—Rev., 339.

1629. Records allowed under this chapter have same effect as original.—The records and registries allowed by the court in pursuance of this chapter shall have the same force and effect as original records and registries.—Rev., 340.

1630. Recitals of decrees, records, etc., in deeds executed prior to destruction thereof prima facie evidence of existence.—The recitals, reference to, or mention of any decree, order, judgment or other record of any court of record of any county in which the courthouse, or records of said courts, or both, have been destroyed by fire or otherwise, contained, recited, or set forth in any deed of conveyance, paper writing, or other bona fide written evidence of title, executed prior to the destruction of the courthouse and records of said county, by any executor or administrator with a will annexed, or by any clerk and master, superior court clerk, clerk of the court of pleas and quarter sessions, sheriff, or other officer, or commissioners appointed by either of said courts, and authorized by law to execute said deed or other paper writing, shall be deemed, taken and recognized as true in fact, and shall be prima facie evidence of the existence, validity and binding force of said decree, order, judgment or other record so referred to or recited in said deed, or paper writing, and shall be to all intents and purposes binding and valid against all persons mentioned or described in said instruments of writing, deed, etc., as purporting to be parties thereto, and against all persons who were parties to said decree, judg-

ment, order or other record so referred to or recited, and against all persons claiming by, through or under them or either of them.—Rev., 341.

1631. Deed prima facie evidence of records recited therein.—Such deed of conveyance, or other paper writing, executed as aforesaid, and registered according to law, shall be allowed to be read in any suit now pending or which may hereafter be instituted in any court of this state, as prima facie evidence of the existence and validity of the decree, judgment, order, or other record upon which the same purports to be founded, without any other or further restoration or reinstatement of said decree, order, judgment, or record, than is contained in this chapter.—Rev., 342.

1632. Provisions of this chapter extend to what records, etc.—This chapter shall extend to records of any court which has been or may be destroyed by fire or otherwise, and to any deed of conveyance, paper writing, or other bona fide evidence of title executed before the destruction of said records.—Rev., 343.

1633. Certain records in Moore County presumed to have been burned.—In all cases in Moore County of bonds, indentures, accounts, minutes, judgment rolls and all other records that can not be found on record or on file in the said clerk's office after diligent search therefor by the clerk of the court, and can not be otherwise accounted for, the same having been on record or file therein on or before September fifth, one thousand eight hundred and eighty-nine, shall be presumed to have been destroyed by fire. In all cases in which said bonds, indentures, accounts, minutes, judgment rolls and other records or any part thereof have been lost or destroyed and in which it may become necessary to use the same in evidence, it shall be presumed that the same were executed, filed, audited or adjudicated, as the case may be, in due and legal form and were in all respects lawful records and documents.—Rev., 344.

1634. In Buncombe, Madison, Yancey and Haywood counties.—Whenever any of the records of any of the courts in this state have been burnt, lost or destroyed, and there is in existence any copy thereof, or of any part of the same, duly certified, whether under the seal of the court or otherwise, by any former clerk of said court, it shall be the duty of the present clerk of said court, or any clerk of said court hereafter in office, upon presentation to him of such copy and the payment of his lawful fees therefor, to record said copy upon the minutes or records of said court; and after the same shall have been so recorded the record then shall be used as and be taken and deemed and shall have all the force and effect of the original record so burnt, lost or destroyed; and such record thereof, or a copy of the same duly certified by the clerk of said court, shall be in all respects competent in the same way and manner as the original record in all the courts of this state. This section shall apply only to the counties of Buncombe, Madison, Yancey and Haywood.—Rev., 345.

CHAPTER XI.

CLERK OF SUPERIOR COURT.

1635. Includes judge of probate, which is abolished.—The office or place of probate judge is abolished, and the duties heretofore pertaining to clerks of the superior court as judges of probate shall be performed by the clerks of the superior court as clerks of said court, and all matters pending before said judges of probate shall be deemed transferred to the clerks of the superior court.—Rev., 889.

1636. How elected; term of office.—A clerk of the superior court for each county shall be elected by the qualified voters thereof, at the time and in the manner prescribed by law for the election of members of the general assembly. Clerks of the superior court shall hold office for four years.—Rev., 890.

1637. How inducted into.—Clerks of the superior court, before entering on the duties of their office, shall take and subscribe before some officer authorized by law to administer an oath, the oaths prescribed by law, and file such oaths with the register of deeds for the county.—Rev., 891.

Note.—Acting before qualifying a misdemeanor, see s. 3565 of the Revisal. For official bond, see s. 1584 *infra*.

The deputy clerk of the superior court is authorized to take the affidavit of the plaintiff, and to order the seizure of personal property, in claim and delivery; also to issue executions in the name of the clerk, and may perform all the duties of the office except such as are judicial in their character, or where a statute specially provides otherwise.—*Jackson v. Buchanan*, 89—74; *Miller v. Miller*, 89—402.

1638. When declared vacant.—In case any clerk shall fail to give bond and qualify as required by law, the presiding officer of the board of commissioners of his county shall immediately inform the resident judge of the judicial district thereof, who shall thereupon declare the office vacant and fill the same, and the appointee shall give bond and qualify.—Rev., 892.

1639. May be resigned.—Any clerk of the superior court may resign his office to the judge of the superior court residing in the district in which is situated the county of which he is clerk, and said judge shall fill the vacancy.—Rev., 893.

1640. When removed from.—Upon the conviction of any clerk of the superior court of an infamous crime, or of corruption and malpractice in office, he shall be removed from office, and he shall be disqualified from holding or enjoying any office of honor, trust or profit under this state.—Rev., 894.

1641. How vacancies filled.—In case the office of clerk of a superior court for a county shall become vacant otherwise than by the expiration of the term, and in case of a failure by the people to elect, the judge of the superior court for the county shall appoint to fill the vacancy until an election can be regularly held.—Rev., 895.

1642. How furnished with stationery, etc.—The requisite stationery, records, furniture and filing cases and devices for official use must be furnished to the clerk by the board of commissioners; and to each of such books there must be attached an alphabetical index securely bound in the volume, referring to the entries therein by the page of the book, unless there is a cross-index of such book required by law to be kept. These books must, at all proper times, be open to the inspection of any person.—Rev., 896.

1643. Examined by solicitor.—At every regular term of the superior court, the solicitor for the judicial district shall inspect the office of the clerk and report to the court in writing. If any solicitor shall fail or neglect to perform the duty hereby imposed on him, he shall be liable to a penalty of five hundred dollars to any person who shall sue for the same.—Rev., 897.

Note.—Failing to keep records a misdemeanor, see s. 3592 of the Revisal.

2. Deputies.

1644. May be appointed.—Clerks of the superior court may appoint deputies, who shall take and subscribe the oath prescribed for clerks.—Rev., 898.

1645. Record of appointment and discharge.—Each clerk of a superior court shall make a record of the appointment of each deputy he

may appoint, on the special proceedings docket of his court, giving the name of such appointee and the date of such appointment, and make a cross-index of the same, and shall furnish to the register of deeds of his county a transcript of such record; and such register of deeds shall record the same in the records of deeds in his office and make a cross-index thereof on the general index in his office. Whenever any such deputy clerk shall be removed from his office, the clerk of the superior court by whom he was appointed shall write on the margin of the record of such appointment in his office, and on the margin of the record of such appointment in the office of the register of deeds, the word "revoked" and the date of such revocation, and sign his name thereto. A duly certified copy of such appointment and of such revocation, under the hand and official seal of the register of deeds, shall be deemed prima facie evidence of the regularity of such appointment and revocation, and shall be admitted as evidence in all the courts.—Rev., 899.

1646. Clerk responsible for acts of.—The several clerks of the superior court shall be held responsible for the acts of their deputies. Deputies shall be subject in all respects to all laws which apply to the clerks.—Rev., 900.

3. Powers.

1647. Enumeration of.—Every clerk has power—

(1) To issue subpoenas to compel the attendance of any witness residing or being in the state, or to compel the production of any bond or paper, material to any inquiry pending in his court.

(2) To administer oaths and take acknowledgments, whenever necessary, in the exercise of the powers and duties of his office.

(3) To issue commissions to take the testimony of any witness within or without this state.

(4) To issue citations and orders to show cause to parties in all matters cognizable in his court, and to compel the appearance of such parties.

(5) To enforce all lawful orders and decrees by execution or otherwise, against those who fail to comply therewith or to execute lawful process. Process may be issued by the clerk, to be executed in any county in the state, and to be returned before him.

(6) To exemplify, under seal of his court, all transcripts of deeds, papers or proceedings therein, which shall be received in evidence in all the courts of the state.

(7) To preserve order in his court and to punish contempts.

(8) To adjourn any proceeding pending before him from time to time.

(9) To open, vacate, modify, set aside, or enter as of a former time, decrees or orders of his court, in the same manner as courts of general jurisdiction.

(10) To award costs and disbursements as prescribed by law, to be paid personally, or out of the estate or fund, in any proceeding before him.

(11) To compel the return to his office by each justice of the peace, on the expiration of the term of office of such justice, or if the justice be dead, by his personal representative, of all records, papers, dockets and books held by such justice by virtue or color of his office and to deliver the same to the successor in office of such justice.

(12) To take proof of deeds, bills of sale, official bonds, letters of attorney, or other instruments permitted or required by law to be registered.

(13) To take proof of wills and grant letters testamentary and of administration.

(14) To revoke letters testamentary and of administration.

(15) To appoint and remove guardians of infants, idiots, inebriates and lunatics.

(16) To bind out apprentices and to cancel the indentures in such cases.

(17) To audit the accounts of executors, administrators, collectors, receivers, commissioners and guardians.

(18) To exercise jurisdiction conferred on him in every other case prescribed by law.—Rev., 901.

1648. When he can not exercise.—No clerk can act as such in relation to any estate or proceeding—

(1) If he has, or claims to have, an interest by distribution, by will, or as creditor, or otherwise.

(2) If he is so related to any person having or claiming such interest, that he would, by reason of such relationship, be disqualified as a juror; but the disqualification on this ground ceases, unless the objection is made at the first hearing of the matter before him.

(3) If he or his wife is a party or a subscribing witness to any deed of conveyance, testamentary paper or nuncupative will; but this disqualification ceases when such deed, testamentary paper, or will has been finally admitted to or refused probate by another clerk, or before the judge of the superior court.

(4) If he or his wife is named as executor or trustee in any testamentary or other paper; but this disqualification ceases when the will or other paper is finally admitted to or refused probate by another clerk or before the judge of the superior court.

(5) If he shall renounce the executorship and endorse the same on the will or on some paper attached thereto, before it is propounded for probate, in which case the renunciation must be recorded with the will if admitted to probate.—Rev., 902.

Note.—Clerk can not appoint himself or deputy commissioner to sell land, see Partition, s. 2513 of the Revisal.

1649. Exercise of, on waiver of disqualification.—The parties may waive the disqualification specified in subdivisions one, two, three and five of the preceding section, and upon filing in the office such waiver in writing, the clerk shall act as in other cases.—Rev., 903.

1650. When can not exercise, cause removed.—When any of the disqualifications specified in this chapter exist, and there is no waiver thereof, or can not be such waiver, any party in interest may apply to the judge of the district or to the judge holding the courts of such district for an order to remove the proceedings to the clerk of the superior court of an adjoining county in the same district.—Rev., 904.

Note.—For probate of conveyances to which clerks are parties, see Conveyances, s. 1743 infra.

1651. Exercised by judge, when.—In all cases where the clerk of the superior court shall be executor, administrator, collector or guardian of any estate at the time of his election to office, in order to enable him to settle such estate, the judge of the superior court mentioned in the preceding section is empowered to make such orders as may be necessary in the settlement of the estate; may audit the accounts or appoint a commissioner to audit the accounts of such executor or administrator, and report to either of said judges for his approval, and when the accounts are so approved, it shall be his duty to order the proper record to be made by the clerk, and the accounts to be filed in court.—Rev., 905.

4. Duties.

1652. To receive official papers from predecessor.—Immediately after he shall have given bond and qualified, the clerk shall receive from the late clerk of the superior court all the records, books, papers, moneys and property of his office, and give receipts for the same, and if any clerk shall refuse, or fail within a reasonable time after demand to

deliver such records, books, papers, moneys and property, he shall be liable on his official bond for the value thereof.—Rev., 906.

Note.—Failure to deliver books, records, etc., misdemeanor, see ss. 3576, 3592 of the Revisal.

1653. To transfer records to successor, how compelled.—Upon going out of office for whatever reason, any clerk of the superior, inferior, or criminal court, shall transfer and deliver to his successor (or to such person, before his successor in office may be appointed, as the court may designate), all records, documents, papers, and money belonging to the office. And the judge appointing any clerk to a vacancy in the clerkship of the superior court may give to such person an order for the delivery to him, by the person having the custody thereof, of the records, documents, papers and moneys belonging to the office, and he shall deliver the same in obedience to such order. And in case any clerk going out of office as aforesaid, or other person having the custody of such records, documents, papers, and money as aforesaid, shall fail to transfer and deliver them as herein directed, he shall forfeit and pay to the state one thousand dollars, which shall be sued for by the prosecuting officer of that court.—Rev., 907.

1654. Unperformed duties of outgoing clerk, how compelled.—Whenever, upon the death or resignation, removal from office, or at the expiration of his term of office, any clerk shall have failed to discharge any of the duties of his office, the court, if practicable, shall cause the same to be performed by another person, who shall receive for such services, and as a compensation therefor, the fees allowed by law to the clerk; and such portion thereof as may be paid by the county, may be recovered by the county, by suit on the official bond of the defaulting clerk, to be brought on the relation of the board of commissioners of the county.—Rev., 908.

1655. When and where to keep office open.—He shall have an office in the court-house or other place provided by the board of commissioners, in the county town of his county. He shall give due attendance, in person or by deputy, at his office daily, Sundays and holidays excepted, from nine o'clock a. m. to three o'clock p. m., and longer when necessary for the dispatch of business; and personally every Monday for the transaction of probate business, and on each succeeding day till such matters are disposed of; and upon his failure to do so, unless caused by sickness or other urgent necessity or unless leave of absence is obtained by law, he shall forfeit his office.—Rev., 909.

1656. How leave of absence from office obtained.—Upon application of any clerk of the superior court to the judge of the superior court, residing in the district in which said clerk resides, showing good and sufficient reason for said clerk absenting himself from his office, said judge may issue an order allowing said clerk to absent himself from his office for such time as said judge may deem proper: Provided, said clerk of the superior court shall at all times leave a competent deputy in charge of his office during his absence. The order of said resident judge granting relief shall be filed and recorded in the office of the clerk of the superior court of the county in which said clerk resides.—Rev., 910.

1657. To furnish blank process, bonds and undertakings.—Clerks of courts shall furnish to parties printed copies of the formal parts of all process required to be issued by them, with convenient blank spaces for the insertion of written matter; and also the blank forms of such bonds and undertakings as are required to be taken by them.—Rev., 911.

1658. How papers must be filed.—The clerk must file and preserve all papers in proceedings before him, or belonging to the court; and shall keep the papers in each action in a separate roll or bundle, and at its termination attach them together, properly labeled, and file them

in the order of the date of the final judgment; and all such papers and the books kept by him belong to, and appertain to, his office, and must be delivered to his successor.—Rev., 912.

1659. To keep record; liable for records and papers.—He shall keep in bound volumes a complete and faithful record of all his official acts, and give copies thereof to all persons desiring them, on payment of the legal fees. He shall be answerable for all records belonging to his office, and all papers filed in the court, and they shall not be taken from his custody, unless by special order of the court, or on the written consent of the attorneys of record of all the parties; but parties may at all times have copies upon paying the clerk therefor.—Rev., 913.

1660. To endorse date of issue on process.—The clerk shall note on all precepts, process and executions the day on which the same shall be issued; and the sheriff or other officer receiving the same for execution shall in like manner note thereon the day on which he shall have received it, and the day of the execution; and every clerk, sheriff or other officer neglecting so to do shall forfeit and pay one hundred dollars.—Rev., 914.

1661.—Books to be kept.—Each clerk shall keep the following books, which shall be open to the inspection of the public during regular office hours:

(1) Summons docket, which shall contain a docket of all writs, summonses or other original process issued by him, or returned to his office, which are made returnable to a regular term of the superior court; this docket shall contain a brief note of every proceeding whatever in each action, up to the final judgment inclusive.

(2) Judgment docket, which shall contain a note of the substance of every judgment and every proceeding subsequent thereto.

(3) Civil issue docket, which shall contain a docket of all issues of fact joined upon the pleadings, and of all other matters for hearing before the judge at a regular term of the court, a copy of which shall be furnished to the judge at the commencement of each term.

(4) Cross-index to judgments, which shall contain a direct and reverse alphabetical index of all final judgments in civil actions rendered in the court, with the dates and numbers thereof, and also of all final judgments rendered in other courts and authorized by law to be entered on his judgment docket.

(5) Criminal docket, which shall contain a note of every proceeding in each criminal action.

(6) Minute docket, which shall contain a record of all proceedings had in the court during term, in the order in which they occur, and such other entries as the judge may direct to be made therein.

(7) Special proceedings docket, which shall contain a docket of all writs, summonses, petitions, or other original process issued by him, or returnable to his office, and not returnable to a regular term; this docket shall contain a brief note of every proceeding, up to the final judgment inclusive.

(8) Minute docket, which shall contain a record of all proceedings had before the clerk, in actions or proceedings not returnable to a regular term of the court.

(9) Record of wills, which shall contain a record of all wills, with the certificates of probate thereof.

(10) Record of appointments, which shall contain a record of appointments of executors, administrators, guardians, collectors and masters of apprentices, with revocations of all such appointments; and on which shall be noted all subsequent proceedings relating thereto.

(11) Record of orders and decrees, which shall contain a record of all orders and decrees passed in his office, which he is required to make in writing, and not required to be recorded in some other book.

(12) Record of accounts, which shall contain a record of accounts, in which must be recorded inventories and annual accounts of executors, administrators, collectors, trustees under assignments for creditors, and guardians, as audited by him from time to time.

(13) Record of settlements, which shall contain a record of settlements, in which must be entered the final settlements of executors, administrators, collectors, commissioners, trustees under assignments for creditors, and guardians.

(14) Record of jurors, which shall contain a list of all persons who serve as grand, petit, and tales jurors in his court; which shall be properly indexed.

(15) Record of justices of the peace, which shall contain a complete list of the justices of the peace of the county, by townships, giving the date of election or appointment, qualification, and expiration of term of office of each; and whenever a vacancy occurs it shall be noted therein. These books shall at all times show a complete list of the justices of the peace of the county and who was the predecessor of each justice and the succession in office.

(16) Record of books, which shall contain the date of delivery to each justice of the peace of any dockets, records, and books; and the date of the receipt by him to any justice of the peace, or to the personal representative of a deceased justice of the peace, for any dockets, records and books returned to him.

(17) Cross-index of wills, which shall contain a general alphabetical cross-index of all wills filed or recorded in the office of the clerk of the superior court, and devising real estate or any interest therein, whether such devise appears on the face of said will or not, showing the full name of each deviser, and all devisees as they are given in the will, together with the date of the probate of such will.

(18) Cross-index of executors and administrators, which shall contain a general alphabetical cross-index of the appointment of all executors and administrators made by the courts of their county, showing the name of the appointee, the name of the decedent, and date of appointment.

(19) Cross-index of guardians, which shall contain a general alphabetical cross-index of the appointment of all guardians made by the courts of their county, showing the name of the guardian, the names of the wards, and date of appointment.

(20) Record of fines and penalties, which shall contain an itemized and detailed statement of the respective amounts received by him in the way of fines, penalties and forfeitures, and paid over to the county treasurer.

(21) Lien docket, which shall contain a record of all notices of liens filed in his office, properly indexed, showing the names of the lienor and lienee.

(22) Record of appointment of receivers, which shall contain a record of all appointments of receivers, and all inventories, reports, and accounts filed by them; which shall be properly indexed.

(23) Record of corporations, which shall contain a record of the certificate of incorporation of all corporations chartered under general law, with principal office or place of business in his county.

(24) Accounts of indigent orphans, which shall contain a record of all receipts from persons for money paid for indigent children.

(25) Register of physicians and surgeons, which shall contain a list of the names and places of residence with date of registration of all persons registered by him as physicians and surgeons.

(26) Register of dentists, which shall contain a registration of certificates of all persons entitled to practice dentistry in his county.

(27) Register of trained nurses, which shall contain the name, residence and date of registration of all trained nurses duly licensed in his county.

(28) Permanent roll of registered voters, which shall contain an alphabetical list by townships of all persons entitled to permanent registration, giving the name and age of each, the name of the person from whom he was descended, unless he himself was a voter on July 1, 1867, or prior thereto, the state in which he was such voter, and the date he applied for such registration.

(29) Record of payment of poll tax, which shall contain a list by townships of all persons certified to him by sheriff or tax collector as having paid their poll tax by May first.

(30) Lunacy docket, which shall contain a record of all examinations of persons alleged to be insane, a brief summary of the proceedings, and his findings, and a record of all proceedings in lunacy transmitted to him by justices of the peace.

(31) Record of county treasurer's report, which shall contain an itemized statement of all fines and penalties paid to the county treasurer; which said itemized statement of fines and penalties received by the county treasurer shall be by him reported to the clerk on the first day of January, April, July and October, respectively, of each and every year.

(32) Nol. pros. with leave record, which shall contain a record of all cases in which a nolle prosequi with leave is entered in criminal actions, with the term of court at which the order is made, and which shall be cross-indexed.—Rev., 915.

5. Reports.

1662. List of justices to secretary of state.—The clerk of the superior court of each county in which justices of the peace are not elected by the qualified voters thereof on the first Monday in January preceding each regular session of the general assembly shall certify to the secretary of state a correct list of all justices of the peace in office in his county, the township in which each resides, the term of office of each, time of election or appointment, and when the respective terms of office of each expires. He shall also report the names of those elected or appointed justices of the peace, but who have failed to qualify, and when their terms of office began and the length thereof.—Rev., 916.

1663. Criminal statistics to attorney-general.—Within twenty days after the adjournment of any term of the superior court at which criminal causes were triable, the clerk thereof shall transmit to the office of the attorney-general of the state a duly certified statement of the number of indictments finally disposed of at such court, specifying the number of each separate offense, the number on which convictions were had and on which defendants were acquitted, and of indictments against persons who were convicted on confession, and against persons who were discharged without trial, and also the name, age, occupation, sex, race, and offense of every person convicted at such court, or pleading guilty of any offense, together with such other items of information in relation to such convicts and their offenses as the attorney-general shall require, on a form prescribed by him. For every neglect of any clerk of said court he shall forfeit the sum of fifty dollars, to be adjudged in the superior court of Wake County on the motion of the attorney-general, whose duty it is hereby made to make such motion at the first term of said court held after such neglect of any clerk.—Rev., 917.

6. Money in Hands of.

1664. Of funds in hand to county commissioners.—Clerks of the superior courts shall make an annual report of all public funds which may be in their hands on the first Monday in December of each and every year, or oftener, if required by order of the board of commissioners or any other lawful authority, which report shall include a

statement of all funds in the hands of said clerks by virtue or color of their office, and which may belong to persons or corporations. The said report shall be made to the board of county commissioners and shall be addressed to the chairman thereof, and the said report shall give an itemized statement of said funds so held, with the date and source from which they were received, and the person to whom due, how invested and where, and in whose name deposited, giving the date of any certificate of deposit, or other evidence of investment of said fund, and the rate of interest the same is drawing, and said report shall be subscribed and verified by the oath of the party making the same before any person allowed to administer oaths.—Rev., 918.

Note.—Failure to report or swearing falsely to same a misdemeanor, see s. 3605 of the Revisal.

1665. How approved, recorded, and published.—The board of commissioners shall refer all itemized statements made by the clerks of the superior courts to a special committee of their board, who shall compare the same with the records of the clerk's office from which said report is made, and certify the same to the board as correct, and if approved the board shall cause the same to be registered in the office of the register of deeds, in a book to be furnished to said register by the board of county commissioners, which books shall be styled "Record of Official Reports," with a proper index of all reports recorded therein, and each original report shall, if approved by the chairman of the board, be endorsed with the word "approved," the date of approval, and the endorsement signed by the chairman, and when recorded by the register of deeds he shall endorse thereon the date of registration, the page of the Record of Official Reports upon which the same is registered, sign the same and file it in his office. The said register shall also cause a copy of said report to be published one time in some newspaper of general circulation published in the county of said register and also posted at the court-house door within twenty days after filing said reports; and if no newspaper is published in the county the posting of said report at the court-house door shall be a sufficient publication. The cost of publishing said report shall be paid by the county.—Rev., 919.

1666. Compelled by commissioners.—If any clerk shall fail to report, or if after a report has been made, the board of county commissioners shall have reason to believe that any report is incorrect, the board shall take legal steps to compel a proper report to be made by suit on the bond of such clerk, or by reporting the fact to the solicitor of the district to which the county of said board may belong for his action.—Rev., 920.

1667. Paid to persons entitled.—The said clerks shall, on or before the first day of January in every year after the statements required in the foregoing sections are made, account with and pay to the persons entitled to receive the same all such balances reported as aforesaid to be in their hands.—Rev., 921.

1668. Fees of jurors and witnesses, when paid to treasurer.—All moneys due jurors and witnesses which shall remain in the hands of any clerk of the superior court on the first day of January after the publication of a third annual report of the said clerk showing the same, shall be turned over to the county treasurer for the use of the school fund of the county, and it shall be the duty of said clerk to indicate in his report any moneys so held by him for a period embracing the two annual reports.—Rev., 922.

1669. Used by public till called for.—The money aforesaid, while held by the clerks, shall be paid on application, to the persons entitled thereto; and after it shall cease to be so held, it may be used as other revenue, subject, however, to the claim of the rightful owner.—Rev., 923.

1670. Paid indigent children, when.—Whenever any moneys less in amount than twenty dollars shall be paid into court for indigent or needy children for whom no one will become guardian, upon satisfactory proof of their necessities, the clerk may pay the same upon his own motion or order to the mother or other person who has charge of said minor or to some discreet neighbor of said minor to be used for the benefit or maintenance of said minor. Such person shall be solvent and shall faithfully apply any money so paid to him or her. The clerk shall take a receipt from the person to whom the same is paid, and record it in a book entitled record of amounts paid for indigent children, and the same shall be a valid acquittance for said clerk.—Rev., 924.

Note.—For duties as to process, see Civil Procedure.

For duties as to wrecked or stranded property, see Wrecks.

For qualifications of notaries public, see s. 2348 of the Revisal.

For liability in relation to guardian bonds, see ss. 1784, 1785 of the Revisal.

CHAPTER XII.

COMMISSIONERS OF AFFIDAVITS.

1671. Clerks and notaries authorized to take affidavits.—The clerks of the supreme and superior courts and notaries public are authorized to take and certify affidavits to be used before any justice of the peace, judge or court of the state; and the affidavits so taken by a clerk shall be certified under the hands of the said clerk, and if to be used out of the county where taken, also under the seal of the court of which they are respectively clerks, and, if by a notary, under his notarial seal.—Rev., 925.

1672. Governor appoints; term of office; powers.—The governor is hereby authorized to appoint and commission one or more commissioners in any foreign country, state or republic; and in such of the states of the United States, or in the District of Columbia, or any of the territories, colonies or dependencies as he may deem expedient, who shall continue in office for two years from the date of their appointment, unless sooner removed by the governor, and shall have authority to take the acknowledgment or proof of any deed, mortgage or other conveyance of lands, tenements, or hereditaments lying in this state, and to take the private examination of married women, parties thereto, or any other writings to be used in this state. And such acknowledgment or proof, taken or made in the manner directed by the laws of this state, and certified by the commissioner, shall have the same force and effect for all purposes as if the same had been made or taken before any competent authority in this state.—Rev., 926.

1673. How qualify; may administer oaths, take depositions, affidavits, etc.—Every commissioner appointed by the governor aforesaid, before he shall proceed to perform any duty by virtue of this chapter, shall take and subscribe an oath before a justice of the peace in the city or county in which such commissioner shall reside well and faithfully to execute and perform all the duties of such commissioner, according to the laws of North Carolina; which oath shall be filed in the office of the secretary of state. And thereupon he shall have full power and authority to administer an oath or affirmation to any person, who shall be willing or desirous to make such oath or affirmation before him, and to take depositions and to examine the witnesses under any commission emanating from the courts of this state, relating to any cause depending, or to be brought in said courts, and every deposition, affidavit, or affirmation made before him shall be as valid as if taken before any proper officer in this state.—Rev., 927.

1674. Appointments, where recorded; certified copies evidence.—It shall be the duty of the governor to cause to be recorded by the secretary of state the names of the persons who are appointed and qualified as commissioners, and for what state, territory, county, city, or town; and the secretary of state, when the oath of the commissioner shall be filed in his office, shall forthwith certify the appointment to the several clerks of the superior courts of the state, who shall record the certificate of the secretary at length; and all removals of commissioners by the governor, and all commissioners whose commissions have expired by law, and which have not been renewed, shall be recorded and certified in like manner; and a certified copy thereof from the clerk, or a certificate of the appointment or removal aforesaid from the secretary of state, shall be sufficient evidence of the appointment or removal of such commissioner.—Rev., 928.

1675. Secretary of state to prepare and publish list in public laws.—The secretary of state shall prepare and cause to be printed in each volume of the public laws a list of all persons who since the preceding publication in the public laws have been appointed commissioners of affidavits and to take the probate of deeds in any foreign country and in the several states and territories of the United States and in the District of Columbia, under this chapter, setting forth the states, territory or district or foreign country for which such persons were appointed and the dates of their respective appointments and term of office; and he shall add to each of said lists a list of all those persons whose appointments have been renewed, revoked, or have resigned, removed or died since the date of the list previously published, as far as the same may be known to him, with the dates of such revocation, resignation, removal or death.—Rev., 929.

1676. Published list conclusive evidence.—The list of commissioners so published in any volume of the public laws shall be conclusive evidence in all courts of the appointments therein stated, and of the dates thereof.—Rev., 930.

1677. Clerks of courts of record in other states, commissioners of deeds.—Every clerk of a court of record in any other state shall have full power as a commissioner of affidavits and deeds as is vested in regularly appointed commissioners of affidavits and deeds for this state.—Rev., 931.

Note.—For powers as to probate of deeds, see ss. 1737-1739 *infra*.

CHAPTER XIII.

COMMON LAW.

1678. Common law declared to be in force.—All such parts of the common law as were heretofore in force and use within this state, or so much of the common law as is not destructive of, or repugnant to, or inconsistent with, the freedom and independence of this state and the form of government therein established, and which has not been otherwise provided for in whole or in part, not abrogated, repealed, or become obsolete, are hereby declared to be in full force within this state.—Rev., 932.

CHAPTER XIV.

CONSTABLES.

1679. How elected.—In each township there shall be a constable, elected by the voters thereof, who shall hold his office for two years.—Rev., 933.

1680. Oath of office to be taken.—All constables, before they shall be qualified to act, shall take before the board of county commissioners the oaths prescribed for public officers, and also an oath of office.—Rev., 934.

Note.—For bond of, see s. 1591 infra.

1681. Special constables appointed by justices.—For the better executing any precept or mandate in extraordinary cases, any justice of the peace may direct the same in the absence of, or for want of a constable, to any person not being a party, who shall be obliged to execute the same, under like penalty that any constable would be liable to.—Rev., 935.

1682. Vacancies filled by board of commissioners.—Upon the death, failure to qualify or removal of any constable out of the township in which he was elected or appointed constable, the board of commissioners may appoint another person to fill the vacancy, who shall be qualified and act until the next election of constables.—Rev., 936.

1683. Powers and duties.—Constables are hereby invested with, and may execute the same power and authority as they have been by law heretofore vested with, and have executed; and, in discharge of their duties, they shall execute all precepts and processes of whatever nature to them directed by any justice of the peace or other competent authority within their county or upon any bay, river, or creek adjoining thereto; and the said precepts and processes shall be returned to the magistrate, or other proper authority.—Rev., 937.

A constable can not serve process addressed to the sheriff, nor can the sheriff serve process addressed to a constable.—*McGloughan v. Mitchell*, 126—681.

1684. Shall execute notices within justice's jurisdiction.—Constables shall likewise execute, within the places aforesaid, all notices tendered to them, which are required by law to be given for the commencement, or in the prosecution of any cause before a justice of the peace; and the service thereof shall be made by delivering a copy to the person to be notified or by leaving a copy at his usual place of abode, if in the jurisdiction of the constable, which service, with the time thereof, he shall return on the notice, and such return shall be evidence of its service. On demand they shall deliver the notice to the party at whose instance it was issued.—Rev., 938.

1685. Town constable, given power to execute certain process.—Whenever any process or other notice is so directed as to authorize a township constable to execute the same, a town constable in that county may execute the same without any more specific direction: Provided, such town constable shall be required to give bond for the performance of his duties such as is required of township constables who execute civil process.—Laws 1907, c. 52.

CHAPTER XV.

CONTEMPT.

1686. What constitutes; common law repealed; appeals; duty of solicitor and attorney-general.—Any person guilty of any of the following acts may be punished for contempt:

(1) Disorderly, contemptuous, or insolent behaviour committed during the sitting of any court of justice, in immediate view and presence of the court, and directly tending to interrupt its proceedings, or to impair the respect due to its authority.

(2) Behaviour of the like character committed in the presence of any referee or referees, while actually engaged in any trial or hearing pursuant to the order of any court, or in the presence of any jury while actually sitting for the trial of a cause, or upon any inquest or other proceeding authorized by law.

(3) Any breach of the peace, noise or other disturbance directly tending to interrupt the proceedings of any court.

(4) Wilful disobedience of any process or order lawfully issued by any court.

(5) Resistance wilfully offered by any person to the lawful order or process of any court.

(6) The contumacious and unlawful refusal of any person to be sworn as a witness, or when so sworn, the like refusal to answer any legal and proper interrogatory.

(7) The publication of grossly inaccurate reports of the proceedings in any court, about any trial, or other matter pending before said court, made with intent to misrepresent or to bring into contempt the said court; but no person can be punished as for a contempt in publishing a true, full and fair report of any trial, argument, decision or proceeding had in court.

(8) Misbehaviour of any officer of the court in any official transaction.

The several acts, neglects and omissions of duty, malfeasances, misfeasances, and nonfeasances, above specified and described, shall be the only acts, neglects and omissions of duty, malfeasances, misfeasances and nonfeasances which shall be the subject of contempt of court. And if there be any parts of the common law now in force in this state which recognized other acts, neglects, omissions of duty, malfeasances, misfeasances and nonfeasances besides those specified and described above, the same are hereby repealed and annulled.

Any person adjudged to be guilty of contempt under this section shall have the right to appeal to the supreme court in the same manner as is provided for appeals in criminal actions: Provided, that such right of appeal shall not apply to the contempt described and defined in subsections one, two, three and six: Provided, further, that such right of appeal shall not apply to the contempt described and defined in subsections four and five; if such contempt shall be committed in the presence of the court: Provided further, that in all cases where a rule for contempt is issued by any court, referee or other officer the solicitor shall appear for the court or other officer issuing the rule, and in case of appeal to the supreme court the attorney-general shall appear for the court or other officer by whom the rule was issued.—Rev., 939.

1687. Punishment.—Punishment for contempt for matters set forth in the preceding section shall be by fine not to exceed two hundred and fifty dollars, or imprisonment not to exceed thirty days, or both, in the discretion of the court.—Rev., 940.

1688. Court may punish summarily.—Contempt committed in the immediate view and presence of the court may be punished summarily, but the court shall cause the particulars of the offense to be specified on the record, and a copy of the same to be attached to every commit-

tal, attachment or process in the nature of an execution founded on such judgment or order.—Rev., 941.

1689. Who may punish.—Every justice of the peace, referee, commissioner, clerk of the superior court, inferior court, criminal court, or judge of the superior court, or justice of the supreme court, or board of commissioners of each county, or corporation commissioner, shall have power to punish for contempt while sitting for the trial of causes or engaged in official duties.—Rev., 942.

1690. Order to show cause when not committed in presence of court.—Whenever the contempt shall not have been committed in the immediate presence of the court, or so near as to interrupt its business, proceedings thereupon shall be by an order directing the offender to appear, within reasonable time, and show cause why he should not be attached for contempt. At the time specified in the order, the person charged with the contempt may appear and answer, and, if he fail to appear and show good cause why he should not be attached for the contempt charged, he shall be punished as provided in this chapter.—Rev., 943.

1691. What constitutes offense punished as for contempt.—Every court of record shall have power to punish as for contempt, when the act complained of was such as tended to defeat, impair, impede, or prejudice the rights or remedies of a party to an action then pending in court—

(1) Any clerk, sheriff, register, solicitor, attorney, counsellor, coroner, constable, referee, or any other person in any manner selected or appointed to perform any ministerial or judicial service, for any neglect or violation of duty or any misconduct by which the rights or remedies of any party in a cause or matter pending in such court may be defeated, impaired, delayed or prejudiced for disobedience of any lawful order of any court or judge, or any deceit or abuse of any process or order of any such court or judge.

(2) Parties to suits, attorneys, and all other persons for the non-payment of any sum of money ordered by such court, in cases where execution can not be awarded for the collection of the same.

(3) All persons for assuming to be officers, attorneys or counsellors of the court, and acting as such without authority, for receiving any property or person which may be in custody of any officer by virtue of any order or process of the court, for unlawfully detaining any witness or party to any suit, while going to, remaining at, or returning from the court where the same may be set for trial, or for the unlawful interference with the proceedings in any action.

(4) All persons summoned as witnesses in refusing or neglecting to obey such summons to attend, be sworn, or answer, as such witness.

(5) Parties summoned as jurors for impropriety, conversing with parties or others in relation to an action to be tried at such court or receiving communication therefrom.

(6) All inferior magistrates, officers and tribunals for disobedience of any lawful order of the court, or for proceeding in any matter or cause contrary to law, after the same shall have been removed from their jurisdiction.

(7) All other cases where attachments and proceedings as for contempt have been heretofore adopted and practiced in courts of record in this state to enforce the civil remedies or protect the rights of any party to an action.—Rev., 944.

Note.—Any person disobeying order of court, guilty, see s. 1141 infra.

1692. Proceedings as for contempt, how prosecuted.—Proceedings as for contempt shall be prosecuted and carried on, as provided in provisional remedies.—Rev., 945.

Note.—For refusal to produce books of corporations, see ss. 1215 et seq. of the Revisal.

CHAPTER XVI.

CONVEYANCES.

1. Construction.

1693. Construed to be in fee, when.—When real estate shall be conveyed to any person, the same shall be held and construed to be a conveyance in fee, whether the word "heirs" shall be used or not, unless such conveyance shall, in plain and express words, show, or it shall be plainly intended by the conveyance or some part thereof, that the grantor meant to convey an estate of less dignity.—Rev., 946.

Note.—Deed and registry of conveyance destroyed, presumed to convey fee-simple, see Evidence, s. 1602 of the Revisal.

1694. Attornment unnecessary, conveyance of reversions, etc.—Every conveyance of any rent, reversion, or remainder in lands, tenements or hereditaments, otherwise sufficient, shall be deemed complete without attornment by the holders of particular estates in said lands: Provided, no holder of a particular estate shall be prejudiced by any act done by him as holding under his grantor, without notice of such conveyance.—Rev., 947.

1695. Vagueness of description.—No deed or other writing purporting to convey land or an interest in land shall be declared void for vagueness in the description of the thing intended to be granted by reason of the use of the word "adjoining" instead of the words "bounded by," or for the reason that the boundaries given do not go entirely around the land described: Provided, it can be made to appear to the satisfaction of the jury that the grantor owned at the time of the execution of such deed or paper-writing no other land which at all corresponded to the description contained in such deed or paper-writing.—Rev., 948.

Note.—For vagueness of description in pleadings, see s. 1605 of the Revisal.

1696. Conveyances to slaves.—Whenever it is made to appear that any gift or conveyance has been made to any person, while a slave, of any lands or tenements, whether the same shall have been conveyed by deed or parol, and the bargainee or donee has been placed into actual possession of the same, then and in that case such gift or conveyance shall have the force and effect of transferring the legal title to the said lands and tenements to such bargainee or donee: Provided, such possession shall have continued for the term of ten years prior to the ninth day of March, one thousand eight hundred and seventy: Provided further, that any absence from the premises from the first day of May, one thousand eight hundred and sixty-one, to the first day of January, one thousand eight hundred and sixty-six, shall not be held as an abandonment or discontinuance of the possession: Provided also, that this section shall not affect the interest of a bona fide purchaser for value from the grantor or bargainor of the lands or tenements in dispute.—Rev., 949.

2. Officer not in Office.

1697. Executed by ex-officer, when.—Whenever any sheriff, coroner, constable or tax collector by virtue of his office shall have sold any real or personal estate, and shall go out of office before executing a proper conveyance therefor, he may execute the same after his term of office shall have expired.—Rev., 950.

1698. Executed by successor, when.—Whenever any sheriff, coroner, constable or tax collector, by virtue of his office, shall have sold any real or personal estate, and such officer shall die or remove from the state before executing a proper conveyance therefor, or whenever a sheriff or tax collector shall die having a tax list in his hands for collection, and his personal representative or surety, in collecting such

taxes, shall make sale according to law, his successor in such office shall execute conveyances for the property so sold to the person entitled.—Rev., 951.

3. By Husband and Wife.

1699. Of wife's land; how proven.—Every conveyance, power of attorney or other instrument affecting the estate, right or title of any married woman in lands, tenements or hereditaments must be executed by such married woman and her husband, and due proof or acknowledgment thereof must be made as to the husband and due acknowledgment thereof must be made by the wife, and her private examination, touching her voluntary assent to such instrument, shall be taken separate and apart from her husband, and such acknowledgment or proof as to the execution by the husband and such acknowledgment by the wife and her private examination shall be taken and certified as provided by law. Any conveyance, power of attorney, contract to convey, mortgage, deed of trust or other instrument executed by any married woman in the manner by this chapter provided and executed by her husband also, shall be valid in law to pass, bind or charge the estate, right, title and interest of such married woman in and to all such lands, tenements and hereditaments or other estate, real or personal, as shall constitute the subject matter or be embraced within the terms and conditions of such instrument or purport to be passed, bound, charged or conveyed thereby.—Rev., 952.

Where land is conveyed to husband and wife, they are both seized of an entirety, and the conveyance by one without the joinder of the other is void.—*Gray v. Bailey*, 117—439.

A voluntary conveyance of her property by a woman in contemplation of marriage, which afterwards takes place, is a fraud upon her husband if he is not apprised of the existence of the deed. This is true, although the conveyance be made for the benefit of children by a former marriage, who are innocent of the fraud.—*Ferebee v. Pritchard*, 112—83.

The privity examination of a wife, as to the execution by her of a deed, taken in one county by a justice of the peace resident in another county, is invalid.—*Dixon v. Roberts*, 114—102. See *Laws 1893*, ch. 293, and *Bank v. Ireland*, 122—575.

1700. Acknowledgment by, at different times and places; before different officers.—In all cases of deeds or other instruments executed by husband and wife and requiring registration, the probate of such instruments as to the husband and acknowledgment and private examination of the wife may be taken before different officers authorized by law to take probate of deeds, and at different times and places, whether both of said officials reside in this state or only one in this state and the other in another state or country. And in taking the probate of such instruments executed by husband and wife, including the private examination of the wife, it shall not be material whether the execution of the instrument was proven as to or acknowledged by the husband before or after the acknowledgment and private examination of the wife.—Rev., 953.

1701. Husband's deed registered though no private examination of wife.—When an instrument purports to be signed by a husband and wife the instrument may be ordered registered, if the acknowledgment of the husband is duly taken, whether the private examination of the wife is properly taken or not, but no such instrument shall be the act or deed of the wife, unless her private examination is taken according to law.—Rev., 954.

1702. What officers can take private examinations of *femes covert*.—When the private examination of any married woman is necessary to be taken, the officials authorized by law to take proofs and acknowledgments of the execution of any instrument are each and every one of them hereby empowered to take the private examination of any married woman touching her free and voluntary assent to the execution of such instrument to which her assent is or may be necessary, and to certify the fact of such private examination.—Rev., 955.

1703. Private examination procured by fraud, deed good as to innocent purchaser for value.—No deed of conveyance for lands nor instrument of writing of whatever nature or kind which is required or allowed by law to be registered executed by a husband and wife since the eleventh of March, one thousand eight hundred and eighty-nine, or which may be hereafter executed by a husband and wife, if the private examination of the wife shall have been certified in the manner prescribed by law, shall be deemed or declared invalid in any case because its execution was procured by fraud, duress or other undue influence, unless it shall be shown that the grantee or person or persons to whom such instrument was or shall be made participated in the fraud, duress or other undue influence or had notice thereof before the delivery of the instrument, and where the grantee or person or persons to whom such instrument has been or shall be made is shown to have had notice of such fraud, duress or undue influence or to have participated therein, an innocent purchaser for a valuable consideration from or under such grantee or person to whom such instrument has been or shall be made shall not be affected by any fraud, duress or other undue influence practiced or exercised in procuring the execution and acknowledgment of such instrument.—Rev., 956.

1704. Under power of attorney from.—All conveyances which may be made by any person under a power of attorney from any feme covert by her freely executed with her husband, shall be valid to all intents and purposes to pass the estate, right and title which said feme covert may have in such lands, tenements and hereditaments as are mentioned or included in such power of attorney.—Rev., 957.

1705. Wife need not join in purchase-money mortgage.—The purchaser of real estate who does not pay the whole of the purchase-money at the time when he takes a deed for title, may make a mortgage or deed of trust for securing the payment of such purchase-money, or such part thereof as may remain unpaid, which shall be good and effectual against his wife as well as himself, without requiring her to join in the execution of such mortgage deed or deed of trust.—Rev., 958; Laws 1907, c. 12.

1706. By husband, wife a lunatic.—Every man whose wife is a lunatic or insane and is confined in any asylum for lunatics and insane persons in the state of North Carolina shall have the right to sell and convey any of his real estate by deed, except his homestead, without the signature and private examination of his wife: Provided, the superintendent of the asylum in which said feme covert shall be confined shall certify that she is confined in the asylum of which he is superintendent, and that she is of insane mind and memory, which certificate shall be subscribed and sworn to before the clerk of the superior court of the county in which said asylum shall be situated, which certificate shall be attached to the deed, together with the certificate of the clerk, under his hand and official seal. When the deed of a married man whose wife is insane or a lunatic shall be executed, probated and registered in accordance with law, it shall convey all the estate and interest of the grantor in the land conveyed free and exempt from the dower rights and all other interests of his wife: Provided, this section shall not apply to the homestead of the husband.—Rev., 959.

Note.—For probate of such deed, see s. 1000 of the Revisal.

Note.—For other rights of husband and wife, see Married Women.

For validity of marriage settlements, see s. 1711 infra.

4. Fraudulent.

1707. Void as to creditors.—For avoiding and abolishing feigned, covinous and fraudulent gifts, grants, alienations, conveyances, bonds, suits, judgments and executions, as well of lands and tenements as of goods and chattels, which may be contrived and devised of fraud, to the

purpose and intent to delay, hinder and defraud creditors and others of their just and lawful actions and debts, every gift, grant, alienation, bargain and conveyance of lands, tenements and hereditaments, goods and chattels, by writing or otherwise, and every bond, suit, judgment and execution, at any time had or made, to or for any intent or purpose last before declared and expressed, shall be deemed and taken (only as against that person, his heirs, executors, administrators and assigns, whose actions, debts, accounts, damages, penalties and forfeitures, by such covinous or fraudulent devices and practices aforesaid, are, shall, or might be in anywise disturbed, hindered, delayed or defrauded), to be utterly void and of no effect; any pretense, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding; and in all actions by creditors to set aside gifts, grants, alienations and conveyances of lands and tenements and judgments purporting to be liens on the same on the ground that such gifts, grants, alienations, conveyances and judgments are feigned, covinous and fraudulent hereunder, it shall be no defense to the action to allege and prove that the lands and tenements alleged to be so conveyed or encumbered do not exceed in value the homestead allowed by law as an exemption: Provided, that nothing in this section shall be construed to authorize the sale under execution or other final process obtained on any debt during the continuance of the homestead, of any interest in such land as may be exempt as a homestead.—Rev., 960.

1708. When void as to purchasers.—Every conveyance, charge, lease or encumbrance of any lands or hereditaments, goods and chattels, if the same be made with the actual intent in fact to defraud such person as hath purchased or shall purchase in fee simple or for lives or years the same lands or hereditaments, goods and chattels, or to defraud such as shall purchase any rent or profit out of the same, shall be deemed utterly void against such person and others claiming under him who shall purchase for the full value thereof the same lands or hereditaments, goods and chattels, or rents or profits out of the same, without notice before and at the time of his purchase of the conveyance, charge, lease or incumbrance, by him alleged to have been made with intent to defraud; and possession taken or held by or for the person claiming under such alleged fraudulent conveyance, charge, lease or encumbrance shall be always deemed and taken as notice in law of the same.—Rev., 961.

1709. Gifts, indebtedness evidence of fraud.—No voluntary gift or settlement of property by one indebted shall be deemed or taken to be void in law, as to creditors of the donor or settler prior to such gift or settlement, by reason merely of such indebtedness, if property, at the time of making such gift or settlement, fully sufficient and available for the satisfaction of his then creditors, be retained by such donor or settler; but the indebtedness of the donor or settler at such time shall be held and taken, as well with respect to creditors prior as creditors subsequent to such gift or settlement, to be evidence only from which an intent to delay, hinder or defraud creditors may be inferred; and in any trial shall, as such, be submitted by the court to the jury, with such observations as may be right and proper.—Rev., 962.

1710. Sales of stock of merchandise in bulk.—The sale in bulk of a large part of the whole of a stock of merchandise, otherwise than in the ordinary course of trade and in regular and usual prosecution of the seller's business, shall be prima facie evidence of fraud, and void as against creditors of the seller, unless the seller, at least seven days before the same, make an inventory showing the quantity and, so far possible, the cost price to the seller of such articles included in the sale, and shall within said time notify the creditors of the proposed sale, and the price, terms and conditions thereof: Provided, that if the owner or owners of said stock of goods shall at any time before the said sale

execute a good and sufficient bond, to a trustee therein named, in an amount equal to the actual cash value of said stock of goods, and conditioned that the seller of said stock of goods will apply the proceeds of said sale, subject to the right of the owner or owners to retain therefrom the personal property exemption or exemptions as are allowed by law, so far as it will go in payment of debts actually owing by said owner or owners, then the provisions of this act shall not apply.

Nothing in this act shall prevent voluntary assignments or deeds of trust for the benefit of creditors as now allowed by law, or apply to sales by executors, administrators, receivers or assignees, under a voluntary assignment for the benefit of creditors, trustees in bankruptcy, or by any public officers under judicial process.—Laws 1907, c. 633.

1711. Marriage settlements, as to existing creditors.—Every contract and settlement of property made by any man and woman in consideration of a marriage between them, for the benefit of such man or woman, or their issue, whether the same be made before or after marriage, shall be void as against creditors of the parties making the same respectively, existing at the time of such marriage, if the same is antenuptial, or at the time of making such contract or settlement, if the same is postnuptial.—Rev., 963.

Note.—See also s. 2108 of the Revisal.

1712. Bona fide conveyances to innocent purchaser for value, valid.—Nothing contained in the preceding sections shall be construed to impeach or make void any conveyance, interest, limitation of use or uses, of or in any lands or tenements, goods or chattels, bona fide made, upon and for good consideration, to any person not having notice of such fraud.—Rev., 964.

1713. Innocent purchaser for value protected against illegal consideration.—No conveyance or mortgage, made to secure the payment of any debt or the performance of any contract or agreement, shall be deemed void as against any purchaser for valuable or other good consideration of the estate or property conveyed, sold, mortgaged or assigned, by reason that the consideration of such debt, contract or agreement shall be forbidden by law, if such purchaser, at the time of his purchase, shall not have had notice of the unlawful consideration of such debt, contract or agreement.—Rev., 965.

1714. Purchasers entitled to remedy of creditors.—Purchasers of estates previously conveyed in fraud of creditors or purchasers shall have like remedy and relief as creditors might have had before the sale and purchase.—Rev., 966.

Note.—For fraudulent trading, see s. 2118 of the Revisal.

5. Assignments for Creditors.

1715. Debts mature on execution of; schedule of preferred debts filed.—Upon the execution of any voluntary deed of trust or deed of assignment for the benefit of creditors, all debts of the maker thereof shall become due and payable at once; a schedule of all preferred debts shall be filed under oath of the assignor in the office of the clerk of the superior court of the county in which such assignment is made, stating the name of preferred creditors, the amount due each, when the debt was made, and the circumstances under which said debt was contracted, and said schedule shall be filed within five days of the registration of such deed of assignment.—Rev., 967.

1716. Inventories filed within ten days.—Upon the execution of such deed of trust, the trustee, whether named therein or appointed as hereafter provided for, shall file with the clerk of the superior court of the county in which said deed of trust is registered, within ten days after the registration thereof, an inventory under oath, giving a com-

plete, full and perfect account of all property that has come into his hands or to the hands of any person for him, by virtue of such deed of trust, and whenever further property of any kind not included in any previous return shall come to the hands or knowledge of such trustee he shall return the same as hereinbefore prescribed within ten days after the possession or discovery thereof.—Rev., 968.

1717. Insolvent trustee without bond removed by clerk.—Upon the complaint of any creditor of the assignor or trustee in such deed of trust, alleging under oath that the trustee named therein is insolvent and asking that he be required to give bond or be removed, it shall be the duty of the clerk of the superior court of the county in which such deed of trust is registered, upon a notice of not more than ten days to such trustee, to hear said complaint; and if upon such hearing said clerk shall be satisfied that said trustee is insolvent, it shall be his duty to remove such trustee and to appoint some competent person to execute the provisions of such deed of trust, unless such insolvent trustee shall file with said clerk a good and sufficient bond, to be approved by said clerk, in a sum double the value of the property in said deed of trust, payable to the state of North Carolina, and conditioned that such trustee shall faithfully execute and carry into effect the provisions of said deed of trust.—Rev., 969.

1718. Substituted trustee to give bond.—Upon the removal of such insolvent trustee it shall be the duty of the clerk to require the person appointed to execute the provisions of such deed of trust, before entering upon his duties, to file with the clerk a good and sufficient bond, to be approved by the clerk, in a sum double the value of the property in said deed of trust, payable to the state of North Carolina, and conditioned that such person shall faithfully execute and carry into effect the provisions of said deed of trust.—Rev., 970.

1719. Only perishable property sold within ten days from registration.—It shall be unlawful for any trustee, whether named in such deed of trust or appointed by a clerk of the superior court, to sell any part of the property described in such deed of trust within ten days from the registration thereof, unless such property or some part thereof be perishable, in which case he may sell such property as is perishable, according to the powers conferred upon him in said deed of trust.—Rev., 971.

1720. Creditors to file verified statements with trustee.—All creditors of the maker of such deed of trust shall, before receiving payment of any amount from the said trustee, file with the clerk of the superior court a statement under oath that the amount claimed by him is justly due, after allowing all credits and offsets, to the best of his knowledge and belief.—Rev., 972.

1721. Trustee to file quarterly accounts; close trust in twelve months.—The trustee, whether named in the deed of trust or appointed by a clerk of the superior court, shall within three months from the registration of such deed of trust, file with the clerk of the superior court of the county in which the same is registered an account under oath, stating in detail his receipts and disbursements and his action as trustee, and at each succeeding period of three months he shall file a like account, and within twelve months he shall file his final account of his administration of his trust. The clerk of the superior court shall have power upon good cause shown to extend the time within which the quarterly and final accounts herein provided for are to be filed.—Rev., 973.

Note.—For violation of duty by trustee, see s. 3689 of the Revisal.

6. Contracts to be Written.

1722. Charging executor personally, or one with debt of another.—No action shall be brought whereby to charge an executor, administrator or collector upon a special promise to answer damages out of his own estate or to charge any defendant upon a special promise to answer the debt, default or miscarriage of another person, unless the agreement upon which such action shall be brought, or some memorandum or note thereof shall be in writing, and signed by the party charged therewith or some other person thereunto by him lawfully authorized.—Rev., 974.

1723. With Indians.—All contracts and agreements of every description made with any Cherokee Indian, or any person of Cherokee Indian blood within the second degree, for an amount equal to ten dollars or more, shall be void, unless some note or memorandum thereof be made in writing and signed by such Indian or person of Indian blood, or some other person by him authorized, in the presence of two witnesses, who shall also subscribe the same: Provided, that this section shall not apply to any person of Cherokee Indian blood or any Cherokee Indian who understands the English language and who can speak and write the same intelligently.—Rev., 975; Laws 1907, c. 1004.

1724. For sale or lease of land.—All contracts to sell or convey any lands, tenements or hereditaments or any interest in or concerning them, and all leases and contracts for leasing land for the purpose of digging for gold or other minerals, or for mining generally, of whatever duration; and all other leases and contracts for leasing lands, exceeding in duration three years from the making thereof, shall be void unless said contract, or some memorandum or note thereof, be put in writing and signed by the party to be charged therewith, or by some other person by him thereto lawfully authorized.—Rev., 976.

Lessees have right to sublet if there are no covenants in the lease against it.—Kridner v. Ramsey, 79—354.

1725. Sales of liquors on credit.—No retail liquor dealer shall sell to any person, on credit, liquors to a greater amount than ten dollars, unless the person credited sign a book or note, in the presence of a witness, in acknowledgment of the debt, under the penalty of losing the money so credited; and in any action brought for the recovery of such debt the matter of defense allowed in this section may be set up in the answer and given in evidence.—Rev., 977.

1726. Promise to revive debt of bankrupt.—No promise to pay a debt discharged by any decree of a court of competent jurisdiction in any proceeding in bankruptcy, shall be received in evidence unless such promise shall be in writing and signed by the party to be charged therewith.—Rev., 978.

Note.—For requirement that new promise bars statute of limitations, see Civil Procedure, s. 371 of the Revisal.

7. Registration required.

1727. Probate and registration supplies livery of seizin.—All deeds, contracts or leases, before registration, except those executed prior to January first, one thousand eight hundred and seventy, shall be acknowledged by the grantor, lessor or the person executing the same, or their signatures proven on oath by one or more witnesses in the manner prescribed by law, and all deeds executed and registered according to law shall be valid, and pass title and estates without livery of seizin, attornment or other ceremony whatever.—Rev., 979.

While an unregistered mortgage is good inter partes, actual notice of its existence will not affect the rights of a junior registered mortgage.—Wallace v. Cohen, 111—103.

1728. Conveyances, contracts to convey, and leases of land.—No conveyance of land, or contract to convey, or lease of land for more than

three years shall be valid to pass any property, as against creditors or purchasers for a valuable consideration, from the donor, bargainor or lessor, but from the registration thereof within the county where the land lieth: Provided, the provisions of this section shall not apply to contracts, leases or deeds executed prior to March first, one thousand eight hundred and eighty-five, until the first day of January, one thousand eight hundred and eighty-six; and no purchase from any such donor, bargainor or lessor shall avail or pass title as against any unregistered deed executed prior to the first day of December, one thousand eight hundred and eighty-five, when the person holding or claiming under such unregistered deed shall be in the actual possession and enjoyment of such land, either in person or by his tenant at the time of the execution of such second deed, or when the person, claiming under or taking such second deed, had at the time of taking or purchasing under such deed actual or constructive notice of such unregistered deed, or the claim of the person holding or claiming thereunder.—Rev., 980.

1729. Deeds executed prior to January first, one thousand eight hundred and seventy.—Any person holding any unregistered deed or claiming title thereunder, executed prior to the first day of January, one thousand eight hundred and seventy, may have the same registered without proof of the execution thereof: Provided, that such person shall make an affidavit before the officer having jurisdiction to take probate of such deed, that the grantor, bargainor or maker of such deed, and the witnesses thereto are dead or can not be found, and that he can not make proof of their handwriting: Provided, that it shall also be made to appear by affidavit that affiant believes such deed to be a bona fide deed and executed by the grantor therein named: And provided further, that this section shall not interfere with vested rights, nor shall a deed so admitted to record be used as evidence in any action now pending. Said affidavit shall be written upon or attached to such deed, and the same, together with such deed, shall be entitled to registration in the same manner and with the same effect as if proven in the manner prescribed by law for other deeds.—Rev., 981.

1730. Mortgages and deeds of trust.—No deed of trust or mortgage for real or personal estate shall be valid at law to pass any property as against creditors or purchasers for a valuable consideration from the donor, bargainor or mortgagor, but from the registration of such deed of trust or mortgage in the county where the land lieth; or in case of personal estate where the donor, bargainor or mortgagor resides; or in case the donor, bargainor or mortgagor shall reside out of the state, then in the county where the said personal estate, or some part of the same, is situated; or in case of choses in action, where the donee, bargainee or mortgagee resides.—Rev., 982.

1731. Conditional sales of personal property.—All conditional sales of personal property in which the title is retained by the bargainor, shall be reduced to writing and registered in the same manner, for the same fees and with the same legal effect as is provided for chattel mortgages, in the county where the purchaser resides, or, in case the purchaser shall reside out of the state, then in the county where the said personal estate or some part thereof is situated; or in case of choses in action, where the donee, bargainee or mortgagee resides.—Rev., 983.

1732. Conditional sales of railroad property.—Whenever any railroad equipment and rolling stock shall hereafter be sold, leased or loaned on the condition that the title to the same, notwithstanding the possession and use of the same by the vendee, lessee, or bailee, shall remain in the vendor, lessor or bailor until the terms of the contract, as to the payment of the installments, amounts or rentals payable, or the performance of other obligations thereunder, shall have been fully

complied with; such contract shall be invalid as to any subsequent judgment creditor, or any subsequent purchaser for a valuable consideration without notice, unless—

(1) The same shall be evidenced by writing duly acknowledged before some person authorized to take acknowledgments of deeds.

(2) Such writing shall be registered as mortgages are registered, in the office of the register of deeds in at least one county in which such vendee, lessee or bailee does business.

(3) Each locomotive or car so sold, leased or loaned shall have the name of the vendor, lessor, or bailor, or the assignee of such vendor, lessor or bailor plainly marked upon both sides thereof, followed by the word owner, lessor, bailor or assignee, as the case may be.

This section shall not apply to or invalidate any contract made before the twelfth day of March, one thousand eight hundred and eighty-three.—Rev., 984; Laws 1907, c. 150.

1733. Marriage settlements.—All marriage settlements and other marriage contracts, whereby any money or other estate shall be secured to the wife or husband, shall be proved or acknowledged and registered in the same manner as deeds for lands, and shall be valid against creditors and purchasers for value only from registration.—Rev., 985.

1734. Deeds of gift.—All deeds of gift of any estate of whatever nature shall within two years after the making thereof be proved in due form and registered, or otherwise shall be void, and shall be good against creditors and purchasers for value only from the time of registration.—Rev., 986.

1735. Powers of attorney.—Every power of attorney, wherever made or concerning whatsoever matter, may, on acknowledgment or proof of the same before any competent official, be registered in the county wherein the property or estate which it concerns is situate, if such power of attorney relate to the conveyance thereof; if it does not relate to the conveyance of any estate or property, then in the county in which the attorney resides or the business is to be transacted.—Rev., 987.

1736. Certified copies may be registered; used as evidence.—A duly certified copy of any deed or writing, required or allowed to be registered, may be registered in any county; and the registry or duly certified copy of any deed or writing when registered in the county where the land is situate may be given in evidence in any court of the state.—Rev., 988.

Note.—For records of court to prove deed, see ss. 1626, 1627 *infra*.

8. Probate.

1737. Before what officers.—The execution of all deeds of conveyance, contracts to buy, sell or convey lands, mortgages, deeds of trust, assignments, powers of attorney, covenants to stand seized to the use of another, leases for more than three years, releases and any and all instruments and writings of whatsoever nature and kind which are required or allowed by law to be registered in the office of the register of deeds, or which may hereafter be required or allowed by law to be so registered, may be proven or acknowledged before any one of the following officials of this state: The several justices of the supreme court, the several judges of the superior court, commissioners of affidavits appointed by the governor of this state, the clerk of the supreme court, the several clerks of the superior court, the deputy clerks of the superior courts, the several clerks of the criminal courts, notaries public, and the several justices of the peace.—Rev., 989.

Note.—See Laws 1907, c. 1003, prohibiting a notary public from acting when he is in any-wise interested. See, *infra*, chapter on Notaries Public.

1738. Before what nonresident officers.—The execution of all such instruments and writings as are permitted or required by law to be

registered may be proven or acknowledged before any one of the following officials of the United States, of the District of Columbia, of the several states and territories of the United States, of countries under the dominion of the United States, and of foreign countries: Any judge of a court of record, any clerk of a court of record, any notary public, any mayor or chief magistrate of an incorporated town or city, any ambassador, minister, consul, vice-consul, vice-consul general, or commercial agent of the United States. And the execution of all such instruments may be proven or acknowledged before any justice of the peace of any state or territory of the United States. If the proof or acknowledgment of the execution of an instrument be had before a justice of the peace of any state of the United States other than this state, or of any territory of the United States, the certificate of such justice of the peace shall be accompanied by a certificate of the clerk of some court of record of the county in which such justice of the peace resides, which certificate of the clerk shall be under his hand and official seal, to the effect that such justice of the peace was at the time the certificate of such justice bears date an acting justice of the peace of such county and state or territory, and that the genuine signature of such justice of the peace is set to such certificate.—Rev., 990.

Note.—See Commissioners of Affidavits; Notaries Public.

1739. By commissioner appointed by clerk, maker nonresident.—Whenever it shall appear to the clerk of the superior court of any county that any person nonresident of this state is desirous of acknowledging a power of attorney, deed or other conveyance touching any real estate situated in the county of said clerk, he shall issue a commission to a commissioner for receiving such acknowledgment, or taking such proof, and said commissioner may likewise take the acknowledgment and privy examination of a married woman separate and apart from her husband, touching her assent to any power of attorney, deeds or other conveyances, touching real estate in said county. The commissioner shall make certificate of the acknowledgments or proof and privy examination made by him, and shall return the same to the clerk of the superior court, whereupon he shall adjudge that such conveyance, power of attorney or other instrument is duly acknowledged or proved, and that such examination is in due form, and shall order the same to be registered.—Rev., 991.

1740. Before justice of county other than where land lies; clerk's certificate.—If the proof of acknowledgment of any instrument shall be had before a justice of the peace of any county other than the county in which such instrument is offered for registration, the certificate of proof or acknowledgment made by such justice of the peace shall be accompanied by the certificate of the clerk of the superior court of the county in which said justice of the peace resides, that such justice of the peace was at the time his certificate bears date an acting justice of the peace of such county, and that such justice's genuine signature is set to his certificate. The certificate of the clerk of the superior court herein provided for shall be under his hand and official seal.—Rev., 992.

1741. Seal of probating officer, when.—When proof or acknowledgment of the execution of any instrument by any maker of such instrument, whether a married woman or other person or corporation, is had before any official authorized by law to take such proof and acknowledgment and such official has an official seal, he shall set his official seal to his certificate. If the official before whom the instrument is proven or acknowledged has no official seal, he shall certify under his hand, and his private seal shall not be essential. When the instrument is proven or acknowledged before the clerk or deputy clerk of the superior court of the county in which the instrument is to be registered, the official seal shall not be necessary.—Rev., 993.

1742. Taken anywhere.—The execution of any and all instruments required or permitted by law to be registered may be proven or acknowledged before any of the officials authorized by law to take probates, regardless of the county in this state in which the subject matter of the instrument may be situated and regardless of the domicile, residence or citizenship of the person who executes such instrument, or of the domicile, residence or citizenship of the person to whom or for whose benefit such instrument may be made.—Rev., 994.

1743. When clerk is a party.—All instruments required or permitted by law to be registered to which clerks of the superior court are parties or in which such clerks are interested, may be proved or acknowledged and privy examination of any married woman, when necessary, taken before any justice of the peace of the county of said clerk, which clerk may then, under his hand and official seal, certify to the genuineness thereof, or before any judge of the superior court or justices of the supreme court, and the said instrument probated and ordered to be registered by such judge or justice in like manner as is provided by law for probates by clerks of the superior court in other cases.—Rev., 995.

Noté.—See proviso, s. 1747 infra.

1744. Subscribing witness, or maker subpoenaed, when.—The grantee or other party to an instrument required or allowed by law to be registered may, at his own expense, obtain from the clerk of the superior court of the county in which the instrument is required to be registered a subpoena for any or all of the makers of or subscribing witnesses to such instrument, commanding such maker or subscribing witness to appear before such clerk at his office at a certain time to give evidence concerning the execution of the instrument. Such subpoena shall be directed to the sheriff of the county in which the person upon whom it is to be served resides. If any person refuses to obey such subpoena he shall be liable to a fine of forty dollars or to be attached for contempt by the clerk, upon its being made to appear to the satisfaction of the clerk that such disobedience was intentional, under the same rules of law as are prescribed in the cases of other defaulting witnesses.—Rev., 996.

A clerk is not incompetent to take the acknowledgment of the execution of a deed because he is a subscribing witness to the document.—*Trenwith v. Smallwood*, 111—132.

The filing of a deed for registration is in itself constructive notice, and the failure of the register of deeds to index it can not impair its efficacy if actually registered.—*Davis v. Whitaker*, 114—279.

1745. Proof of witness' handwriting, when.—If an instrument required or permitted by law to be registered have a subscribing witness, and such witness be dead or out of the state, or of unsound mind, the execution of the same may be proven before any official authorized to take the proof and acknowledgment of such instrument by proof of the handwriting of such subscribing witness or of the handwriting of the maker, but this shall not be proof of the execution of instruments by married women.—Rev., 997.

1746. Proof of maker's handwriting, when.—If any instrument required or permitted by law to be registered have no subscribing witness, the execution of the same may be proven before any official authorized to take the proof and acknowledgment of such instrument by proof of the handwriting of the maker, but this shall not apply to proof of execution of instruments by married women.—Rev., 998.

1747. Clerk or deputy must pass on certificate of other officer.—Whenever the proof or acknowledgment of the execution of any instrument required or permitted by law to be registered, is had before any other official than the clerk or deputy clerk of the superior court of the county in which such instrument is offered for registration, the clerk or deputy clerk of the superior court of the county in which the

instrument is offered for registration shall, before the same shall be registered, examine the certificate or certificates of proof or acknowledgment appearing upon the instrument, and if it shall appear that the instrument has been duly proven or acknowledged and the certificate or certificates to that effect are in due form, he shall so adjudge and shall order the instrument to be registered together with the certificates: Provided, that if the clerk of the superior court is a party to or interested in such instrument such adjudication and order of registration shall be made by his deputy or by the clerk of the superior court of some other county of this state, or by some justice of the supreme court of this state, or some judge of the superior court of this state: Provided further, the acknowledgment of such instruments may also be made before a justice of the peace of said county, and the adjudication of the sufficiency of the certificate of said justice may be made by said clerk or his deputy.—Rev., 999.

1748. Of deed by husband whose wife is insane.—When a deed executed by a married man whose wife is insane or a lunatic, together with the certificate of the superintendent of the asylum and the certificate of the clerk taken as prescribed in section nine hundred and fifty-nine, shall be offered for probate before the clerk of the superior court of the county in which the land conveyed is situated, and the execution of such deed shall be acknowledged or proved, the clerk shall adjudge whether the certificates of the superintendent and the clerk are in due form, and if adjudged to be in due form he shall order the registration of the deed and certificates.—Rev., 1000.

9. Forms.

1749. Adjudication and order of registration.—The form of adjudication and order of registration required by section nine hundred and ninety-nine shall be substantially as follows:

North Carolina, County.

The foregoing (or annexed) certificate of (here give name and official title of the officer signing the certificate passed upon) is adjudged to be correct. Let the instrument and the certificate be registered.

This day of, A. D.

—Rev., 1001.

.....
(Signature of officer.)

1750. Acknowledgment by grantor.—Where the instrument shall be acknowledged by the grantor or maker, the form of acknowledgment shall be in substance as follows:

North Carolina, County.

I (here give name of the official and his official title), do hereby certify that (here give the name of the grantor or maker) personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and (where an official seal is required by law) official seal this the day of (year).

(Official seal.)

—Rev., 1002.

.....
(Signature of officer.)

1751. Private examination of wife.—When an instrument purports to be signed by a married woman, the form of certificate of her acknowledgment and private examination before any officer authorized to take the same, shall be in substance as follows:

North Carolina, County.

I (here give name of the official and his official title), do hereby certify that (here give name of the married woman who executed the instrument), wife of (here give husband's name), personally appeared

before me this day and acknowledged the due execution of the foregoing (or annexed) instrument; and the said (here give married woman's name), being by me privately examined, separate and apart from her said husband, touching her voluntary execution of the same, doth state that she signed the same freely and voluntarily, without fear or compulsion of her said husband or any other person, and that she doth still voluntarily assent thereto.

Witness my hand and (when an official seal is required by law) official seal, this (day of month), A. D. (year).

(Official seal.)

—Rev., 1003.

..... (Signature of officer.)

1752. Private examination and acknowledgment by husband.—Where the instrument shall be acknowledged by both husband and wife or by other grantor before the same officer the form of acknowledgment shall be in substance as follows:

North Carolina, County.

I (here give name of official and his official title), do hereby certify that (here give name of the grantors whose acknowledgment is being taken) personally appeared before me this day and acknowledged the due execution of the foregoing (or annexed) instrument, and the said (here give the name of the married woman or women), wife (or wives) of (here give name of husband or husbands), being by me privately examined, separate and apart from her said husband, touching her voluntary execution of the same, doth state that she signed the same freely and voluntarily, without fear or compulsion of her said husband or any other person, and that she doth still voluntarily assent thereto.

Witness my hand and (when an official seal is required by law) official seal, this (day of month), A. D. (year).

(Official seal.)

—Rev., 1004.

..... (Signature of officer.)

1753. Corporate conveyances.—The following forms of probate for deeds and other conveyances executed by a corporation shall be deemed sufficient, but shall not exclude other forms of probate, which would be deemed sufficient in law. If the instrument is executed by the president or presiding member or trustee and two other members of the corporation, and sealed with the common seal, the following form shall be sufficient:

North Carolina, County.

This day of, A. D., personally came before me (here give the name and official title of the officer who signs this certificate), A. B. (here give the name of the subscribing witness), who, being by me duly sworn, says that he knows the common seal of the (here give the name of the corporation), and is also acquainted with C. D., who is the president (or presiding member or trustee), and also with E. F. and G. H., two other members of said corporation; and that he, the said A. B., saw the said president (or presiding member or trustee) and the said two other members sign the said instrument, and saw the said president (or presiding member or trustee) affix the said common seal of said corporation thereto, and that he, the said subscribing witness, signed his name as such subscribing witness thereto in their presence. Witness my hand and (when an official seal is required by law) official seal, this ... day of, (year).

(Official seal.)

..... (Signature of officer.)

If the deed or other instrument is executed by the president, presiding member or trustee of the corporation, and sealed with its common seal, and attested by its secretary or assistant secretary, either of the following forms of proof and certificate thereof shall be deemed sufficient:

North Carolina, County.

This day of, A. D., personally came before me (here give name and official title of the officer who signs the certificate) A. B. (here give the name of the attesting secretary or assistant secretary), who, being by me duly sworn, says that he knows the common seal of (here give the name of the corporation), and is acquainted with C. D., who is the president of said corporation, and that he, the said A. B., is the secretary (or assistant secretary) of the said corporation, and saw the said president sign the foregoing (or annexed) instrument, and saw the said common seal of said corporation affixed to said instrument by said president (or that he, the said A. B., secretary or assistant secretary as aforesaid, affixed said seal to said instrument), and that he, the said A. B., signed his name in attestation of the execution of said instrument in the presence of said president of said corporation. Witness my hand and (when an official seal is required by law) official seal, this the day of (year).

(Official seal.)

.....
(Signature of officer.)

(2)

North Carolina, County.

This is to certify that on the day of, 19...., before me personally came (president, vice-president, secretary or assistant secretary, as the case may be), with whom I am personally acquainted, who, being by me duly sworn, says that is the president (or vice-president), and is the secretary (or assistant secretary) of the, the corporation described in, and which executed the foregoing instrument; that he knows the common seal of said corporation; that the seal affixed to the foregoing instrument is said common seal, and the name of the corporation was subscribed thereto by the said president (or vice-president), and that said president (or vice-president) and secretary (or assistant secretary) subscribed their names thereto, and said common seal was affixed, all by order of the board of directors of said corporation, and that the said instrument is the act and deed of said corporation. Witness my hand and (when an official seal is required by law) official seal, this the day of (year).

(Official seal.)

.....
(Signature of officer.)

(3)

If the deed or other instrument is executed by the signature of the president, presiding member or trustee of the corporation, and sealed with its common seal and attested by its secretary, the following form of proof and certificate thereof shall be deemed sufficient:

This day of, A. D., personally came before me (here give name and official title of the officer who signs the certificate) A. B., who, being by me duly sworn, says that he is president (presiding member or trustee) of the company, and that the seal affixed to the foregoing (or annexed) instrument in writing is the corporate seal of the company, and that said writing was signed and sealed by him in behalf of said corporation by its authority duly given. And the said A. B. acknowledged the said writing to be the act and deed of said corporation.

.....
(Signature of officer.)

If the officer before whom the same is proven be the clerk or deputy clerk of the superior court of the county in which the instrument is offered for registration, he shall add to the foregoing certificate the following: "Let the instrument with the certificate be registered."—Rev., 1005; Laws 1907, c. 927.

1754. Clerk's certificate upon probate by justice of the peace.—When the proof or acknowledgment of any instrument is had before a justice of the peace of some other state or territory of the United States, or before a justice of the peace of this state but of a county different from that in which the instrument is offered for registration, the form of certificate as to his official position and signature shall be substantially as follows:

North Carolina, County.

I, A. B. (here give name and official title of a clerk of a court of record) do hereby certify that C. D. (here give the name of the justice of the peace taking the proof, etc.), was at the time of signing the foregoing (or annexed) certificate an acting justice of the peace in and for the county of and state (or territory) of, and that his signature thereto is in his own proper handwriting.

In witness whereof, I hereunto set my hand and official seal, this day of, A. D.

(Official seal.)

—Rev., 1006.

(Signature of officer.)

1755. Clerk's certificate upon probate by nonresident officer without seal.—When the proof or acknowledgment of any instrument is had before any official of some other state, territory or country and such official has no official seal, then the certificate of such official shall be accompanied by the certificate of a clerk of a court of record of the state, territory or country in which the official taking the proof or acknowledgment resides, of the official position and signature of such official; such certificate of the clerk shall be under his hand and official seal and shall be in substance as follows:

North Carolina, County.

I, A. B. (here give name and official title of a clerk of a court of record as provided herein), do hereby certify that C. D. (here give name of the official taking the proof, etc.), was at the time of signing the foregoing (or annexed) certificate a (here give the official title of the officer taking proof, etc.), in and for the county of and state of (or other political division of the state, territory or country as the case may be), and that his signature thereto is in his own proper handwriting.

In witness whereof, I hereunto set my hand and official seal, this day of, A. D.

(Official seal.)

—Rev., 1007.

(Signature of clerk.)

10. Probates Validated.

1756. Errors in registration corrected.—Every person who discovers that there is an error in the registration of his grant, conveyance, bill of sale or other instrument of writing, may prefer a petition to the clerk of the superior court of the county in which said writing is registered, in the same manner as is directed for petitioners to correct errors in grants or patents, and if on hearing the same before said clerk, it appears that errors have been committed, the clerk shall order the register of the county to correct such errors and make the record conformable to the original: Provided, that such petitioner shall have notified his grantor and every person claiming title to, or having lands adjoining those mentioned in the petition, thirty days previous to preferring the same: Provided further, that any person dissatisfied with the judgment may appeal to the superior court as in other cases.—Rev., 1008.

1757. Taken by judges supreme or superior court, or deputy clerks.—Wherever the judges of the supreme or the superior court, or the

clerks or deputy clerks of the superior court, or courts of pleas and quarter sessions, mistaking their powers, have essayed previously to the first day of January, one thousand eight hundred and eighty-nine, to take the probate of deeds or any instrument required or allowed by law to be registered, and the privy examination of *femes covert*, whose names are signed to such deeds, and have ordered said deeds to registration, and the same have been registered, all such probates, privy examinations and registrations so taken and had are validated.—Rev., 1009.

1758. Defective order of registration.—In all cases where any clerk of the superior courts or clerk of the inferior courts or clerk of any criminal courts of this state has passed, or shall hereafter pass, upon the certificate of an officer, taking the proof or acknowledgment of any deed, deed in trust, mortgage or other instrument required to be registered, and has then worded or shall word the order to registration substantially as follows: "Therefore, let the same with this certificate be registered," and the instrument has been admitted or shall hereafter be admitted to registration on such order, such registration shall be as good and valid as if the order to registration had been as follows: "Therefore, let the instrument with the certificates be registered."—Rev., 1010.

1759. Where registered on order of judge, clerk being party.—All deeds, mortgages or other instruments which prior to the twentieth day of January, one thousand eight hundred and ninety-three, have been probated by a justice of the peace, and ordered to registration by a judge of the superior court or justice of the supreme court to which clerks of the superior court are parties are hereby confirmed, and the probates and orders for registration declared to be valid.—Rev., 1011.

1760. Notary having certified under his private seal.—In every case, prior to the twenty-seventh day of January, one thousand nine hundred and five, where a notary public or clerk of a court of record, residing in this state or any other state, has taken the acknowledgment of any deed, mortgage or other instrument requiring registration or the privy examination of a married woman, or proof of the execution of such deed, mortgage or other instrument by witness, and has certified such acknowledgment, privy examination or proof, without the use of his official or notarial seal, and although the term of said notary had expired, and the clerk of the court has adjudged such certificate to be in due form and has ordered such deed, mortgage or other instrument to be registered, and the same has been registered, every such certificate is hereby declared to be in all respects valid.—Rev., 1012; Laws 1907, cc. 213, 665 and 971.

Note.—The act of 1907, c. 213, inserting the words "or clerk of a court of record," does not apply to any action pending February 18, 1907.

1761. Before officer of state other than that of grantor.—In all cases where the acknowledgment, examination and probate of any deed, mortgage, power of attorney, or other instrument required or authorized to be registered has been taken or had by or before any judge, clerk of a court of record, notary public having a notarial seal, mayor of a city having a seal, or justice of the peace of a state other than the state in which the grantor, maker or subscribing witness resided at the time of the execution, acknowledgment, examination or probate thereof, and such acknowledgment, examination or probate so had and taken is or was in other respects according to law, and such instrument has been duly ordered to registration and has been registered, then such acknowledgment, examination, probate and registration are hereby in all respects made valid and binding: Provided, that this section shall apply to probates and acknowledgments of deputy clerks of other states when such probate and acknowledgment has been attested by the offi-

cial seal of said office and adjudged sufficient and in due form of law by the clerk of the court in the state where the instrument is required to be registered: Provided, this section shall not affect any pending suit.—Rev., 1013.

1762. Where secretary of state instead of governor has certified to officer.—In all cases, where any deed concerning lands or any power of attorney for the conveyance of the same, or any other instrument required or allowed to be registered, has been, prior to the twenty-ninth day of January, one thousand nine hundred and one, acknowledged by the grantor therein, or proven by the private examination of any married woman, who was a party thereto, taken according to law, before any judge of a supreme, superior or circuit court, of any other state or territory of the United States, where the parties to such instrument resided, and the certificate of such judge as to such acknowledgment, probate or private examination, and also the certificate of the secretary of state of said state or territory instead of the governor thereof (as required by the laws of this state then in force) that the judge, before whom the acknowledgment or probate and private examination was taken, was at the time of taking the same a judge as aforesaid, are attached to said deed, or other instrument, and the said deed or other instrument, having said certificates attached, has been exhibited before the former judge of probate, or the clerk of the superior court of the county in which the property is situated and such acknowledgment, or probate and private examination, have been adjudged by him to be sufficient and said deed or other instrument ordered to be registered and has been registered accordingly, such probate and registration shall be valid: Provided, that nothing herein contained shall affect the rights of third parties, who are purchasers for value, without notice from the grantor in such deed or other instrument.—Rev., 1014.

1763. Where clerks interested.—The probate and registration of all deeds, mortgages and other instruments requiring registration, prior to the fourth day of March, one thousand nine hundred and seven, to which the clerks of the superior courts are parties or in which they have an interest and which have been registered on the order of such clerks on proof of acknowledgment taken before such clerks, justices of the peace or notaries public be and the same are hereby declared valid. This section shall not affect pending actions.—Rev., 1015; Laws 1907, c. 1003.

1764. Where officer interested in grantee corporation.—In all cases when acknowledgment of proof of any conveyance has been taken before a clerk of superior court, justice of the peace or notary public, who was at the time a stockholder or officer in any corporation, bank or other institution which was a party to such instrument, the certificates of such clerk of superior court, justice of the peace, notary public, shall be held valid, and are so declared.—Laws 1907, c. 1003.

Note.—Amendment of 1907 does not affect actions pending March 11, 1907.

1765. Where "previously" has been used instead of "privately."—All probates of deeds, letters of attorney or other instruments requiring registration to which married women were parties, had and taken prior to the fourteenth day of February, one thousand eight hundred and ninety-three, in which probates it appears that such married women were "previously examined" instead of "privately examined," are hereby validated and confirmed.—Rev., 1016.

Note.—Laws 1907, c. 1003, does not affect actions pending March 11, 1907.

1766. Probate in wrong county; by wife before husband.—The probate and registration of all deeds and other instruments requiring registration taken by a justice of the peace in the county other than that in which the grantor or subscribing witness resided, and all probates of instruments executed by a husband and wife in which the

probate as to the husband has been taken before or subsequent to the privy examination of his wife are validated.—Rev., 1017.

1767. Acknowledgments before different officers.—Where, prior to the second day of March, one thousand eight hundred and ninety-five, the probate of a deed or other instrument, executed by husband and wife, has been taken as to the husband and wife by different officers having the power to take probates of deeds, whether both officers reside in this state, or one in this state and the other in another state, or foreign country, the said probate, in the cases mentioned, shall be valid to all intents and purposes, and all deeds and other instruments required to be registered, and which have been ordered to registration by the proper officer in this state, and upon such probate or probates, and have been registered, shall be taken and considered as duly registered and the word "probate," as used in this section, shall include privy examination of the wife.—Rev., 1018; Laws 1907, c. 34.

Note.—Chapter 34, Laws 1907, does not apply to any action pending January 25, 1907.

1768. Acknowledgment by resident beyond the state.—In all cases, prior to the ninth day of March, one thousand eight hundred and ninety-five, when a deed of mortgage executed by a resident of this state has been proven or acknowledged by the maker thereof before a notary public of any other state of the United States, and said deed or mortgage has been ordered to be registered by the clerk of the superior court of the county in which the land conveyed by such deed or mortgage is situated, and said deed or mortgage has been registered, such registration shall be valid and binding.—Rev., 1019.

1769. By clerks of criminal courts in Buncombe County.—Wherever clerks of the criminal courts of Buncombe County have, prior to the second day of February, one thousand eight hundred and ninety-three, essayed to make the probate of any deed, letter of attorney or other instrument requiring registration, and the private examination of females covert whose names are signed to such deeds, and have ordered said deeds to registration, and the same have been registered, all such probates, private examinations and registrations so taken and had shall be valid and binding.—Rev., 1020.

1770. By clerks of inferior courts.—All probates and orders of registration made by and taken before any clerk of any inferior or criminal court, prior to the twentieth day of February, one thousand eight hundred and eighty-five, and valid in form and substance, shall be valid and effectual, and all deeds, mortgages or other instruments requiring registration, registered upon such probate and order of registration, shall be valid. This section shall apply only to the counties of Halifax, Northampton, Hertford, Buncombe, Mecklenburg, Granville, Beaufort, Lenoir, Robeson, Cumberland, Ashe, Martin, Wayne, Greene, Iredell, Bertie, Edgecombe, Duplin and New Hanover.—Rev., 1021.

1771. Before notary or clerk of court of record of another state.—All deeds and conveyances made for lands in this state, which have previous to February fifteenth, one thousand eight hundred and eighty-three, been proven before a notary public or clerk of a court of record of any other state, and such proof having been duly certified by such notary or clerk taking the proof as aforesaid, under the official seal of such notary public or court of record, and such deed or conveyance so proven and certified, with the certificate of having been registered in the office of the register of deeds in the book of records thereof for the county in which such lands are situate at the time of the registration of such deed or conveyance, shall be sufficient registration of the same, and such proof and registration shall be adjudged good and valid in law.—Rev., 1022.

1772. Evidence under preceding section.—All deeds and conveyances proven, certified and registered under the preceding section, or certified

copies of the same, may be used as evidence of title for the lands on the trial of any suit in any courts where title to the lands shall come in controversy, and further registration of such deeds and conveyances so proven and registered shall not be necessary.—Rev., 1023.

1773. Taken before vice-consul or vice-consul general.—The order for registration by the clerk of the superior court and the registration thereof of all deeds of conveyance and other instruments in any county of this state prior to January first, one thousand nine hundred and five, upon the certificate of any vice-consul or vice-consul general of the United States residing in a foreign country, certifying in due form under his name and the official seal of the United States consul or United States consulate general of the same place and country where such vice-consul or vice-consul general resided and acted, that he had taken the proof or acknowledgments of the parties to such instruments, together with the privy examinations of married women parties thereto, are hereby, together with such proof and acknowledgments, privy examinations of married women by, and certificates as, such vice-consuls or vice-consuls general, validated, and the same shall be valid and binding.—Rev., 1024.

1774. Under form previously legal.—Where deeds or other instruments have heretofore been acknowledged by husband and wife or by other grantors pursuant to any form of acknowledgment which was then lawful, such acknowledgment is hereby declared to be sufficient and valid.—Rev., 1025.

1775. Proof of handwriting of grantor refusing to acknowledge.—All registrations of instruments prior to February fifth, one thousand eight hundred and ninety-seven, permitted or required by law to be registered, which were ordered to registration upon proof of the handwriting of the grantor or maker who refused to acknowledge the execution, are hereby validated.—Rev., 1026.

1776. Proof of corporate articles of agreement.—All proofs of articles of agreement for the creation of corporations which were, prior to the eighteenth day of February, one thousand nine hundred and one, made before any officer who was at that time authorized by the law to take proofs and acknowledgments of deeds and mortgages are ratified and declared valid.—Rev., 1027.

1777. Execution and proof of corporate deeds.—All deeds and conveyances for land in this state made by any corporation of this state, which have heretofore been proven or acknowledged before any notary public in any other state, or before any commissioner of deeds and affidavits for the state of North Carolina in any other state, and sealed with the common seal of the corporation and attested by the treasurer, are hereby ratified and confirmed and declared to be good and valid deeds for all purposes. Wherever any such deeds heretofore executed by any corporation of this state by the president thereof and attested by the treasurer of said corporation, and sealed with the common seal of said corporation, have been proven or acknowledged before any notary public of any state, or before any commissioner of deeds and affidavits for the state of North Carolina in any other state, and said acknowledgment or probate has been duly passed upon by any deputy clerk and adjudged to be correct and sufficient and in due form, and ordered to be registered, said acknowledgment, probate and registration are hereby ratified and confirmed, and said deed is declared to be legally executed and good and valid in law, and no further registration of such deeds shall be necessary. All such deeds and conveyances proven or acknowledged and registered as aforesaid, or certified copies of the same, may be used as evidence of title to the lands therein conveyed in the trial of any suits in any of the courts of this state where the title of said lands shall come in controversy.—Rev., 1028.

1778. By de facto officers in Greene.—The probate of all instruments requiring registration made by Alexander Taylor while acting as and being the de facto clerk of the superior court of Greene County during the month of December, one thousand eight hundred and ninety-eight, and during the year one thousand eight hundred and ninety-nine, are hereby declared valid; and the registration of all instruments requiring registration as made by W. E. Murphrey while acting as the de facto register of deeds of Greene County, during the month of December, one thousand eight hundred and ninety-eight, and during the year one thousand eight hundred and ninety-nine, are hereby declared valid.—Rev., 1029.

1779. By clerks of wrong county.—All deeds acknowledged or proven, prior to January twenty-first, one thousand eight hundred and ninety-one, by the grantor, maker or subscribing witness before any clerk of the superior court or of the inferior or criminal court, or before a notary public or justice of the peace of a county within this state wherein the land conveyed did not lie, and where said grantor, maker or subscribing witness did not reside, are declared sufficiently proven and the registration valid.—Rev., 1030.

1780. Where certificate of justice of the peace is not proven.—In every case where it appears from the record of the office of the register of deeds in any county in this state that a justice of the peace in this state has taken the proof or acknowledgment of the execution of a deed, or other instrument required by law to be registered, or has taken the privy examination of a married woman to any such instrument, and has certified to such proof, acknowledgment or privy examination, and such deed and certificate of the justice of the peace has been registered, prior to the first day of January, A. D. one thousand nine hundred and seven, in the county wherein the lands described in such deed or other instrument are located, without the certificate of the clerk of the superior court of the county of such justice of the peace, as to his being an acting justice of the peace, or as to the genuineness of his signature, or with a defective certificate of such clerk; or without the order of registration of the clerk of the superior court of the county in which such deed or other instrument is registered, or his adjudication that such deed or other instrument is proven, or as to the form of the certificate as to such proofs, or with a defective certificate of such adjudication, every and all such proofs, acknowledgment, privy examination, certificates and registration are validated: Provided, however, that such proof, acknowledgment, privy examination, certificates and registration shall be valid against creditors or purchasers from donor, bargainor or lessor, named in such deed or other instrument, only from the date of the ratification of this act.—Laws 1907, c. 83. (Ratified February 1, 1907.)

Note.—Appointment and discharge of deputies, see Clerk Superior Court, ss. 1644 and 1645 *infra*.

Clerks responsible for acts of deputies in probating conveyances, see Clerk Superior Court, s. 1646 *infra*.

For law making property of corporations under mortgage liable for certain debts, see s. 1131 of the Revisal.

11. Trustees.

1781. Trustee or mortgagee dead, personal representative executes power.—When the mortgagee in a mortgage, or the trustee in a deed in trust executed for the purpose of securing a debt containing a power of sale, shall die before the payment of the debt secured in such mortgage or deed in trust, all the title, rights, powers and duties of such mortgagee or trustee shall pass to and devolve upon the executor or administrator of such mortgagee or trustee, including the right to bring an action of foreclosure in any of the courts of this state as prescribed for trustees or mortgagees, and in such action it shall not

be necessary to make the heirs at law of such deceased mortgagee or trustee parties thereto.—Rev., 1031.

1782. Foreclosures by representative of deceased mortgagees, validated.—In all actions which may have been brought or prosecuted prior to the fourth day of March, one thousand nine hundred and five, for the foreclosure of any mortgage or deed in trust by any executor or administrator of any deceased mortgagee or trustee where the heirs of the mortgagor have been duly made parties and regular and orderly decrees of foreclosure entered by the court and sale had by a commissioner appointed by the court for that purpose and deed made after confirmation, the title so conveyed to purchaser at such judicial sale shall be deemed and held to be vested in such purchaser, whether the heir of such deceased mortgagee or trustee shall have been a party to such foreclosure proceeding or not, and such heir of any deceased mortgagee shall be estopped to bring or prosecute any further action against such purchaser for the recovery of such property or foreclosure of such mortgage or deed of trust.—Rev., 1032.

1783. Surviving mortgagee executes power.—In all mortgages and deeds of trust wherein two or more persons, as trustees or otherwise, are given power to sell the property therein conveyed or embraced, and one or more of such persons shall be dead, any one of the persons surviving having such power may make sale of such property in the manner directed in such deed, and execute such assurances of title as are proper and lawful under the power so given; and the act of such person, in pursuance of said power, shall be as valid and binding as if the same had been done by all the persons on whom the power was conferred.—Rev., 1033.

1784. When succeeding guardian executes power.—When a guardian to whom a mortgage has been executed has died or been removed or resigned before the payment of the debt secured in such mortgage, all the rights, powers and duties of such mortgagee shall devolve upon the succeeding guardian.—Rev., 1034.

1785. Power executed by agent, appointed orally or by writing.—All sales of property, real or personal, under a power of sale contained in any mortgage or deed of trust to secure the payment of money, by any mortgagee or trustee, through an agent or attorney for that purpose, by such mortgagee or trustee, appointed orally or in writing, whether such writing has been or shall be registered or not, shall be valid, whether or not such mortgagee or trustee shall have been or shall be present at such sale.—Rev., 1035.

1786. Infant trustees convey, how.—Whenever any infant shall be seized or possessed of any estate whatever in trust, whether by way of mortgage or otherwise, for another person who may be entitled in law to have a conveyance of such estate, or may be declared to be seized or possessed, in the course of any proceeding in the superior court, the court may decree that the infant shall convey and assure such estate, in such manner as it may direct, to such other person; and every conveyance and assurance made in pursuance of such decree shall be as effectual in law as if made by a person of full age.—Rev., 1036.

1787. When clerk appoints a new trustee.—When the sole or last surviving trustee named in a will or deed of trust has died, removed from the county where the will was probated or deed executed and from the state, or in any way become incompetent to execute the said trust, or is a nonresident of this state, the clerk of the superior court of the county wherein the said will was probated or deed of trust was executed is authorized and empowered, in proceedings to which all persons interested shall be made parties, to appoint some discreet and competent person to act as trustee and execute the trust according to its true intent and meaning, and as fully as if originally appointed:

Provided, that in all actions or proceedings had under this section prior to January first, one thousand nine hundred, before the clerks of the superior court in which any trustee was appointed to execute a deed of trust where any trustee of a deed of trust has died, removed from the county where the deed was executed and from the state, or in any way become incompetent to execute the said trust, whether such appointment of such trustees by order or decree, or otherwise, was made upon the application or petition of any person or persons ex parte, or whether made in proceedings where all the proper parties were made, are in all things confirmed and made valid so far as regards the parties to said actions and proceedings to the same extent as if all proper parties had originally been made in such actions or proceedings.—Rev., 1037.

1788. Executor of mortgagee may renounce; trustee appointed by clerk.—The executor or administrator of any deceased mortgagee or trustee in any mortgage or deed of trust heretofore or hereafter executed may renounce in writing before the clerk of the superior court before whom he qualifies, the trust under the mortgage or deed of trust at the time he qualifies as executor or administrator, or at any time thereafter before he intermeddles with or exercises any of the duties under said mortgage or deed of trust, except to preserve the property until a trustee can be appointed, and in every such case of renunciation the clerk of the superior court of any county wherein the said mortgage or deed of trust is registered shall have power and authority, upon proper proceedings instituted before him, as in other cases of special proceedings, to appoint some person to act as trustee and execute said mortgage or deed of trust. That the clerk of the superior court, in addition to recording his proceedings in his book of orders and decrees, shall enter the name of the substituted trustee or mortgagee on the margin of the deed in trust or the mortgage in the book of the office of the register of deeds of said county.—Rev., 1038.

1789. Sales by trustees of benevolent orders.—Lodges of Masons, Odd Fellows and Knights of Pythias, camps of the Woodmen of the World, councils of the Junior Order of United American Mechanics, orders of the Elks, and any other benevolent or fraternal orders and societies, may appoint from time to time suitable persons trustees of their bodies or societies in such manner as such body or society may deem proper, which trustees, and their successors, shall have power to receive, purchase, take and hold property, real and personal, in trust for such benevolent society, or body; and such trustees shall have the power when instructed so to do by resolution adopted by the said societies, or body, of which they are trustees, to sell and convey in fee simple any real or personal property owned by said body or society; and such conveyances so made, or hereafter to be made, by said trustees shall be effective to pass said land or property in fee simple to the purchaser.—Laws 1907, c. 22.

12. Chattel Mortgage.

1790. Form of.—Any person indebted to another in a sum to be secured, not exceeding at the time of executing the instrument herein provided for the sum of three hundred dollars, may execute a chattel mortgage in form substantially that which follows:

I,, of the county of, in the state of North Carolina, am indebted to..... of county, in said state, in the sum of dollars, for which he holds my note to be due the day of, A. D. 19...., and to secure the payment of the same, I do hereby convey to him these articles of personal property, to-wit:..... but on this special trust, that if I fail to pay said debt and interest on

or before the day of, A. D. 19...., then he may sell said property, or so much thereof as may be necessary, by public auction for cash, first giving twenty days' notice at three public places, and apply the proceeds of such sale to the discharge of said debt and interest on the same, and pay any surplus to me. Given under my hand and seal, this day of, A. D. 19....

—Rev., 1039.

..... (Seal.)

1790a. Registration of, notice of sale under.—Such chattel mortgage shall be good to all intents and purposes when the same shall be duly registered according to law, but no sale thereunder shall be made without giving at least twenty days public notice of the time and place of such sale.—Rev., 1040.

The assignee of a chattel mortgage acquires an interest in the debt secured and the property pledged, which will be protected in courts of law, as well as in courts of equity. Such assignment may be either with or without seal; it need not be registered, and may be proved as any other endorsement.—*Hodges v. Wilkinson*, 111—56.

No seal is necessary to the due execution of a mortgage of personal property.—*Foundry Co. v. Woltman*, 114—178.

Note.—For fees for probate and registration, see ss. 2773, 2776 of the Revisal.

For joinder of chattel mortgage and lien bond, see Liens, s. 2055 of the Revisal.

1791. Mortgages of household and kitchen furniture.—All conveyances of household and kitchen furniture by a married man made to secure the payment of money or other thing of value, shall be void, unless the wife join therein and her privy examination be taken in the manner prescribed by law in conveyances of real estate.—Rev., 1041.

Note.—For fees for, see ss. 2773, 2776 of the Revisal.

The above act does not apply to an absolute sale of such property, but only to a conveyance by chattel mortgage or other way by which a lien can be imposed thereon.—*Kelly v. Fleming*, 113—133.

13. Mortgage Sales.

1792. Advertised at court-house door.—All property, real and personal, sold under the terms of any mortgage or other contract, expressed or implied, whether advertised in some newspaper or otherwise, shall be advertised by posting a notice at some conspicuous place at the court-house door in the county where the property is situated, such notice to be posted for at least twenty days before the sale, unless a shorter time be expressed in the contract.—Rev., 1042.

Note.—For notice of sale under chattel mortgage, see s. 1790 infra.

See also s. 641 of the Revisal.

1793. Description of property in advertisements.—In sales of real estate under deeds of trust or mortgages, it shall be the duty of the trustee or mortgagee making such sale to fully describe the premises in the notice required by law, substantially as the same is described in the deed or authority under which said trustee or mortgagee makes such sale.—Rev., 1043.

1794. Power of sale barred when.—The power of sale of real property contained in any mortgage or deed of trust for the benefit of creditors shall become inoperative, and no person shall execute any such power, when an action to foreclose such mortgage or deed of trust for the benefit of creditors would be barred by the statute of limitations. Whenever an action to foreclose any such mortgage or deed of trust is now barred by the statute of limitations, the authority to execute the power of sale contained therein shall be barred on the first day of January, one thousand nine hundred and seven.—Rev., 1044.

Note.—For who can execute the power, see s. 1781 et seq., infra.

14. Revocation and Discharge.

1795. Deeds to persons not in esse revoked.—The grantor in any voluntary conveyance in which some future interest in real estate is conveyed or limited to a person not in esse, may at any time before he comes into being, revoke by deed such interest so conveyed or limited.

This deed of revocation shall be registered as other deeds; and the grantor of like interests for a valuable consideration may, with the joinder of the person from whom the consideration moved, revoke said interest in like manner.—Rev., 1045.

1796. Mortgages and deeds of trust released, how.—Any deed of trust or mortgage which hath been or which hereafter may be registered in the manner required by law, may be discharged and released in the following manner, to-wit:

(1) The trustee or mortgagee or his or her legal representative, or the duly authorized agent or attorney of such trustee, mortgagee or legal representative may, in the presence of the register of deeds or his deputy, acknowledge the satisfaction of the provisions of such deed of trust or mortgage, whereupon it shall be the duty of the register or his deputy forthwith to make upon the margin of the record of such deed of trust or mortgage an entry of such acknowledgment of satisfaction, which shall be signed by the said trustee, mortgagee, legal representative or attorney, and witnessed by the register or his deputy, who shall also affix his name thereto; or,

(2) Upon the exhibition of any mortgage, deed in trust or other instrument intended to secure the payment of money, accompanied with the bond or note, to the register of deeds or his deputy, where the same is registered, with the endorsement of payment and satisfaction appearing thereon by the payee, mortgagee, trustee or assignee of the same, the said register or his deputy shall cancel the mortgage or other instrument by entry of "satisfaction" on the margin of the record; and the person so claiming to have satisfied the debt may retain possession of the bond and mortgage or other instrument: Provided, if the register or his deputy shall require it he shall file a receipt to him showing by whose authority the mortgage or other instrument was cancelled.

Every such entry thus made by the register of deeds or his deputy, and every such entry thus acknowledged and witnessed shall operate and have the same effect to release and discharge all the interest of such trustee, mortgagee or representative in such deed or mortgage, as if a deed of release or reconveyance thereof had been duly executed and recorded.—Rev., 1046.

15. Certain Deeds Validated.

1797. By sheriffs or commissioners without seals.—Any deed executed prior to the first day of January, one thousand eight hundred and ninety-five, by any sheriff, commissioner or other officer authorized to execute a deed, by virtue of his office or appointment, and said sheriff, commissioner or other officer shall have omitted to affix a seal after his signature, the said deed shall be good and valid, notwithstanding that the seal has been omitted: Provided, that said deed be sufficient in other respects to pass the title to the land therein described: Provided, that this act shall not apply to actions now pending.—Laws 1907, c. 807 (ratified March 8, 1907).

CHAPTER XVII.

CORONERS.

1798. How elected; clerk appoints for special cases.—In each county a * * * coroner shall be elected by the qualified voters thereof, as is prescribed for members of the general assembly, and shall hold their offices (his office) for two years. * * * When there is no coroner in a county, the clerk of the superior court for the county may appoint one for special cases.—Rev., 1047.

1799. Oath of office to be taken.—Every coroner, before entering upon the duties of his office, shall take and subscribe to the oaths prescribed for public officers, and an oath of office.—Rev., 1048.

1800. Vacancy, clerk may appoint special.—Whenever there is a vacancy existing in the office of coroner of any county, and it shall be made to appear by the affidavit of some responsible person that a deceased person whose body has been found within the county probably came to his death by the criminal act or default of some person, it shall be the duty of the clerk of the superior court of such county to appoint some suitable person as special coroner to hold an inquest over the body of the deceased.—Rev., 1049.

1801. Powers, penalties and liabilities of special.—The special coroner appointed under the provisions of the preceding section shall be invested with all the powers and duties conferred upon the several coroners in respect to holding inquests over deceased bodies, and shall be subject to the penalties and liabilities imposed on the said coroners.—Rev., 1050.

1802. Holds inquests; when physician summoned.—It shall be the duty of the several coroners, whenever it is made to appear, by the affidavit of some responsible person, that the deceased probably came to his death by the criminal act or default of some person or persons to go to the place where the body of such deceased person is and forthwith to summon a jury of six good and lawful men; whereupon the coroner, upon oath of said jury at said place, shall make inquiry when, how and by what means such deceased person came to his death, and his name if it was known, together with all the material circumstances attending his death; and if it shall appear that the deceased was slain, then who was guilty either as principal or accessory, if known, or in any manner the cause of his death. And as many persons as are found culpable, by inquisition in manner aforesaid, shall be taken and delivered to the sheriff and committed to jail; and such persons as are found to know anything of the matters aforesaid and are not culpable themselves, shall be bound in a recognizance with sufficient surety to appear at the next superior court to give evidence; of all which matters and things the coroner must make a record of his inquisition signed by the jurors, and return the same to the next superior court of his proper county. It shall be the duty of every coroner, when the jury investigating the case shall require it, to summon a physician or surgeon, except that in Buncombe County, when the coroner is a physician or surgeon, he shall, if requested by one or more of the jurors, make the investigation.—Rev., 1051.

1803. Acts as sheriff, when; special coroner.—If at any time there be no person properly qualified to act as sheriff in any county, the coroner of such county is hereby required to execute all process and in all other things to act as sheriff, until some person shall be appointed sheriff in said county; and such coroner shall be under the same rules and regulations, and subject to the same forfeitures, fines and penalties as sheriffs are by law, for neglect or disobedience of the same duties. And if at any time the sheriff of any county be interested in or a party to any proceeding in any court, and if there be no coroner in such county, or if the coroner be interested in any such proceeding, then the clerk of the court from which such process issues shall appoint some suitable person to act as special coroner to execute such process, and such special coroner shall be under the same rules, regulations and penalties as hereinabove provided for.—Rev., 1052.

1804. Compensation of jurors at inquest.—All persons who may be summoned to act as jurors in any inquest held by a coroner over dead bodies, and who, in obedience thereto, shall appear and act as such jurors, shall be entitled to the same compensation in per diem and mile-

age as is allowed by law to jurors acting in the superior courts. The coroners of the respective counties are hereby authorized and empowered to take proof of the number of days service of each juror so acting and also of the number of miles traveled by such juror in going to and returning from such place of inquest, and shall file with the board of commissioners of the county a correct account of the same, which shall be, by such commissioners, audited and paid in the manner provided for the pay of jurors acting in the superior courts.—Rev., 1053.

CHAPTER XVIII.

CORPORATIONS.

1805. Corporate powers.—Every corporation shall have power—

1. To have succession, by its corporate name, for the period limited in its charter, or certificate of incorporation, and, when no period is limited, for a period of sixty years.

2. To sue and be sued in any court.

3. To make and use a common seal, and alter the same at pleasure.

4. To hold, purchase and convey real and personal estate in or out of the state, and to mortgage the same and its franchises; the power to hold real and personal estate shall include the power to take the same by devise or bequest.

5. To elect and appoint in such manner as it shall determine to be proper, all necessary officers and agents, and fix their compensation and define their duties and obligations.

(6) To conduct business in this state, other states, the District of Columbia, the territories, dependencies and the colonies of the United States, and in foreign countries, and have one or more offices in or out of this state.

(7) To make by-laws and regulations consistent with the laws of the state, for its own government, and for the due and orderly conduct of its affairs and the management of its property.

(8) To wind up and dissolve itself, or to be wound up and dissolved in the manner hereinafter mentioned.—Rev., 1128.

1806. Implied powers; how far this chapter affects all corporations.—

In addition to the powers enumerated in the first section of this chapter, and the powers specified in its charter, or in the act or certificate under which it was incorporated, every corporation, its officers, directors and stockholders, shall possess and exercise all the powers and privileges contained in this chapter so far as the same are necessary or convenient to the attainment of the objects set forth in such charter or certificate of incorporation, and shall be governed by the provisions, and be subject to the restrictions and liabilities in this chapter contained, so far as the same are applicable to, and not inconsistent with, such charter, or the act under which such corporation was formed; and no corporation shall possess or exercise any other corporate powers, except such incidental powers as shall be necessary to the exercise of the powers so given: Provided, nothing in this chapter shall authorize or empower corporations organized under this chapter to lease, operate, maintain, manage or control any railroad except street railways.—Rev., 1129.

In Dare County register of deeds receives fee of twenty-five cents for making such cancellation, to be paid by the party asking cancellation. Laws 1907, c. 392.

1807. How land conveyed; certain conveyances void as to torts.—

Any corporation may convey lands, and all other property which is transferable by deed, by deed of bargain and sale, or other proper deed, sealed with the common seal and signed in its name by the president, a vice-president, presiding member or trustee, and two other members of

the corporation and attested by a witness or witnesses, or by deed of bargain and sale, or other proper deed, sealed with the common seal and signed in its name by the president, a vice-president, presiding member or trustee, and attested by the secretary or assistant secretary of the company. But any conveyance of its property, whether absolutely or upon condition, in trust, or by way of mortgage, executed by any corporation, shall be void and of no effect as to torts committed by such corporation prior to, or at the time of the execution of said deed: Provided, persons injured, or their representatives, shall commence proceedings or actions to enforce their claims against said corporation within sixty days after the registration of said deed, as required by law.—Rev., 1130.

1808. Mortgaged corporate property subject to execution for labor and torts.—Mortgages of corporations upon their property or earnings, whether in bonds or otherwise, shall not have power to exempt the property or earnings of such corporations from execution for the satisfaction of any judgment obtained in the courts of the state against such corporations for labor performed, nor torts committed by such corporation whereby any person is killed or any person or property injured, any clause or clauses in such mortgage to the contrary notwithstanding.—Rev., 1131.

Debts of a corporation for labor performed or materials furnished, to keep it a "going concern," have priority over a mortgage previously recorded, although the labor done or materials furnished do not add to the plant or enhance its value (The Code, s. 1255).—*Coal Co. v. Light Co.*, 118—232.

Coal furnished to and used by an electric light and power company to enable it to operate its plant is "material furnished," within the meaning of section 1255 of The Code.—*Ibid.*

1809. Gas companies may supply electricity.—Any gas company, in addition to the powers contained in the charter, shall have full power to use, employ and supply electricity for lighting public and private buildings and all other places; and may charge and collect such reasonable rates and fees for the use of such lights, fixtures and appliances as may be established by said company, in accordance with law.—Rev., 1132.

1810. Special powers of gas and electric companies.—Gas and electric light and power companies shall have power to lay, extend, construct, build, erect, maintain, repair and remove all necessary or convenient towers, poles, cable wires, conductors, lamps, fixtures, appliances, appurtenances, in, upon, through and over any and all roads, streets, avenues, lanes, alleys and bridges within and near any city, town or village where said company may be located; and all such roads, streets, lanes, alleys and bridges shall be left in as good condition as they were in at the time of using them as aforesaid: Provided, that the rights and privileges conferred in this section shall not be exercised unless the authorities of such city, town or village first give their consent, and afterwards the said authorities shall have full power to control the location of all towers, poles, wires, conductors and all other fixtures, appliances and appurtenances belonging to or operated by any of said companies.—Rev., 1133.

1811. Corporations created hereunder can not do banking business.—No corporation created under the provisions of this chapter shall, by any implication or construction, be deemed to possess the power of carrying on the business of discounting bills, notes or other evidences of debt, or of receiving deposits of money, or of buying gold or silver bullion, or foreign coins, or of buying and selling bills of exchange, or of issuing bills, notes or other evidences of debt, upon loan, or for circulation as money: Provided, that in the transaction of its business it may make, and take and indorse, when necessary, all such bonds, notes and bills of exchange as the particular business may require.—Rev., 1134.

2. Legislative Control.

1812. Legislative power over corporate charters.—The charter of every corporation, or any supplement thereto, or amendment thereof, shall be subject to alteration, modification, amendment or repeal, in the discretion of the legislature, and the legislature may, at pleasure, dissolve any corporation.—Rev., 1135.

1813. This chapter may be amended; corporations bound thereby; appropriate portions a part of all charters.—This chapter may be amended or repealed at the pleasure of the legislature, and every corporation shall be bound by such amendment; but such amendment or repeal shall not take away or impair any remedy against any such corporation, or its officers, for any liability which shall have been previously incurred. This chapter and all amendments thereof shall be a part of the charter of every corporation heretofore formed, or hereafter formed hereunder, except so far as the same are inapplicable and inappropriate to the objects of such corporation.—Rev., 1136.

3. Formation.

1814. How created.—Any number of persons, not less than three, who may be desirous of engaging in any business, or of forming any company, society or association whatever, not unlawful, except railroads, other than street railways, or banking or insurance, or building and loan associations, shall be incorporated in the manner following, and in no other way (except in those cases where, in the judgment of the legislature, the object of the corporation can not be attained under the general law, and in all such cases the act creating the corporation shall contain a preamble, in which shall be set forth specifically and definitely the particular object of the corporation, or provision in the proposed charter, which can not be attained under the general law); that is to say, such persons shall, by a certificate of incorporation, under their hands and seals, set forth—

(1) The name of the corporation; no name shall be assumed already in use by another existing corporation of this state, or so nearly similar thereto as to lead to uncertainty or confusion; and shall end with either the word "company," or the word "incorporated."

(2) The location of its principal office in the state.

(3) The object or objects for which the corporation was formed.

(4) The amount of the total authorized capital stock of the corporation, the number of shares into which the same is divided, and the par value of each share, the amount of capital stock with which it will commence business, and, if there be more than one class of stock, a description of the different classes, with the terms on which the respective classes of stock are created: Provided, however, that the provisions of this paragraph shall not apply to religious, charitable or literary corporations, unless it is desired to have a capital stock; in case any religious, charitable or literary corporation desires to have no capital stock, it shall be so stated, and the conditions of membership shall be also stated.

(5) The names and postoffice addresses of the subscribers for stock, and the number of shares subscribed by each; the aggregate of such subscriptions shall be the amount of capital stock with which the company will commence business; and if there be no capital stock, the names and postoffice addresses of the incorporators.

(6) The period, if any, limited for the duration of the company.

(7) The certificate of incorporation may also contain any provision which the incorporators may choose to insert for the regulation of the business, and for the conduct of the affairs of the corporation, and any provision creating, defining, limiting and regulating the powers of the corporation, the directors and the stockholders, or any class or classes

of stockholders: Provided, such provision be not inconsistent with the laws of this state.—Rev., 1137.

Note.—For improperly doing business under a company name, see s. 2118 of the Revisal.

1815. Street railways may be incorporated hereunder.—Corporations may be organized under the provisions of this chapter for the purpose of building, maintaining or operating street railways. The term street railways, wherever used in this chapter, shall be held to include railways operated either by steam or electricity, or by whatever motive power, used and operated as means of communication between different points in the same municipality, or between points in municipalities lying adjacent or near to each other, or between the territory lying contiguous to the municipality in which is the home office of said company, and such railways may carry and deliver freights: Provided, that no such railway shall operate a line extending in any direction more than fifty miles from the municipality in which is located its home office. No such railway shall be operated in any city or town without the consent of the municipal authorities thereof.—Rev., 1138.

1816. Certificate of incorporation, how signed, proved, filed and recorded.—The certificate of incorporation shall be signed by the original incorporators, or a majority of them, and shall be proved, or acknowledged, before an officer duly authorized under the laws of this state to take the proof or acknowledgment of deeds. Such certificate of incorporation, when so proved, shall be filed in the office of the secretary of state, and there remain of record, and he shall, if the same shall be in accordance with law, thereupon cause the same to be recorded in his office in a book to be kept for that purpose, and known as the "Corporation Book," and he shall, upon the payment of the organization tax and fees, certify under his official seal, a copy of the said certificate of incorporation and probates, which said certified copy shall be forthwith recorded in the office of the clerk of the superior court of the county where the principal office of said corporation in this state shall, or is to be established, in a book to be known as the "Record of Incorporations"; and said certificate of incorporation, or a copy thereof, duly certified by the secretary of state, or by the clerk of the superior court of the county in which the same is recorded, shall be evidence in all courts and places, and shall, in all judicial proceedings, be deemed prima facie evidence of the complete organization and incorporation of the company purporting thereby to have been established.—Rev., 1139.

1817. When incorporators become a corporation.—The persons so associated, their successors and assigns, shall, from the date of such filing in said office of the secretary of state, be and constitute a body corporate by the name set forth in such certificate of incorporation, subject to amendment and dissolution in the manner provided by law.—Rev., 1140.

1818. Incorporators to direct affairs until directors are elected.—Until the directors are elected, the signers of the certificate of incorporation shall have the direction of the affairs and of the organization of the corporation, and may take such steps as are proper to obtain the necessary subscription to stock and to perfect the organization of the corporation.—Rev., 1141.

1819. First meeting, how called.—The first meeting of every corporation shall be called by a notice, signed by a majority of the incorporators, designating the time, place and purpose of the meeting, which notice shall be published at least two weeks before the meeting, in some newspaper of the county where the corporation is established; or said first meeting may be called without publication, if two days notice be personally served on all the incorporators, or if all the incorporators shall in writing waive notice and fix a time and place of meeting, no notice or publication shall be required.—Rev., 1142.

1820. Death of incorporators; vacancy filled.—When one or more of the incorporators of any corporation, created by or under any general or special act, shall have died before the corporation shall have been organized pursuant to law, the survivors or survivor may, in writing, designate other persons who may take the place and act instead of those deceased, in the organization; and the organization so effected by their aid shall be as effectual in law as if it had been effected by all the original incorporators.—Rev., 1143.

1821. Errors in certificates of incorporation, how corrected.—Whenever in the certificate of incorporation under any general law there shall be any error or omission in the recital of the act under which said corporation is created, or in the omission of any other matter which is required to be stated in the certificate, it shall be lawful for said corporation to correct such error in the manner following: The board of directors of such corporation shall pass a resolution declaring that such error exists, and that said corporation desires to correct the same, and shall call a meeting of the stockholders of said corporation to take action upon such resolution. The meeting of said stockholders shall be held upon such notice as the by-laws provide, and in the absence of such provision, then upon ten days notice, given personally, or by mail. If two-thirds in interest of all the stockholders shall vote in favor of the correction of such error or omission, a certificate of such action shall be made and signed by the president and secretary under the corporate seal; which said certificate shall be acknowledged or proved as in the case of deeds of real estate, and such certificate, together with the written assent, in person or by proxy, of two-thirds in interest of all the stockholders of said corporation, shall be filed in the office of the secretary of state, and upon the filing thereof the certificate of incorporation shall be deemed to be corrected and amended accordingly, and the filing of said certificate in conformity with this chapter shall have the same force and effect as if said certificate of incorporation had been originally drafted in conformity with the amendment so made.—Rev., 1144.

4. By-Laws.

1822. Power to make and alter.—The power to make and alter by-laws shall be in the stockholders, but any corporation may, in the certificate of incorporation, confer that power upon the directors. By-laws made by the directors under power so conferred may be altered or repealed by the stockholders.—Rev., 1145.

1823. What they may determine and contain.—All corporations may, by their by-laws, where no other provision is specially made, determine the manner of calling and conducting all meetings; the number of members that shall constitute a quorum (provided, in no case shall more than a majority of shares or amount of interest be required to be represented at any meeting in order to constitute a quorum; if the quorum shall not be so determined by the corporation, a majority in interest of the stockholders, represented either in person or by proxy, shall constitute a quorum) the number of shares that shall entitle the members to one or more votes; the mode of voting by proxy; the mode of selling shares for the nonpayment of assessments; the tenure of office of the several officers; and the manner in which vacancies in any of the offices shall be filled, till a regular election, and they may annex suitable penalties to such by-laws, not exceeding in any case the sum of twenty dollars, for any one offense: Provided, that no such by-law shall be made by any corporation repugnant to any provision of its certificate of incorporation; and the provisions of this chapter shall govern in all cases where the by-laws are silent.—Rev., 1146.

5. Officers.

1824. Directors, their selection, powers, duties, terms of office, classes, etc.—The business of every corporation shall be managed by its directors; they shall not be less than three in number, and, except as hereinafter provided, they shall be chosen annually by the stockholders at the time and place provided in the by-laws, and shall hold office for one year and until others are chosen and qualified in their stead; but by so providing in its certificate of incorporation, any corporation organized under this chapter may classify its directors in respect to the time for which they shall severally hold office, the several classes to be elected for different terms: Provided, that no class shall be elected for a shorter period than one year, or for a longer period than five years, and that the term of office of at least one class shall expire in each year. Any corporation which shall have more than one kind of stock, may, by so providing in its certificate of incorporation, confer the right to choose the directors of any class upon the stockholders of any class, or classes, to the exclusion of the others. One director of every corporation of this state shall be an actual resident of this state, and it shall not be necessary for more than one director to be a resident of this state, notwithstanding the provisions of any special charter or other act.—Rev., 1147.

1825. Directors must be stockholders.—No person shall be elected as director of any corporation issuing stock unless he shall be, at the time of his election, a bona fide holder of some of the stock thereof; and any director ceasing to be a bona fide holder of some of the stock thereof, shall cease to be a director. Any corporation may, by its certificate of incorporation or by-laws, determine how many shares a person shall hold to qualify him to be a director.—Rev., 1148.

1826. Officers, their selection, qualifications, duties, terms, etc.—Every corporation organized under this chapter shall have a president, secretary and treasurer, who shall be chosen either by the directors or stockholders, as the by-laws may direct, and shall hold their offices until others are chosen and qualified in their stead; the president shall be chosen from among the directors; the secretary shall record all the votes of the corporation and directors in a book to be kept for that purpose, and perform such other duties as shall be assigned to him. The treasurer may be required to give bond for the faithful discharge of his duty in such sum, and with such surety, or sureties, as shall be required by the by-laws. Any two of the offices may be held by the same person, if the body electing so determine.—Rev., 1149.

1827. Other officers, agents and factors.—The corporation may have such other officers, agents and factors, who shall be chosen in such manner and hold their office for such terms, and upon such conditions as may be prescribed by the by-laws or determined by the board of directors.—Rev., 1150.

1828. Vacancies, how filled.—Any vacancy occurring among the directors, or in the office of president, secretary or treasurer, by death, resignation, removal or otherwise, shall be filled in the manner provided for in the by-laws; in the absence of such provision such vacancies shall be filled by the board of directors.—Rev., 1151.

1829. Annual statement; forfeiture for failure to make; duty of secretary of state and attorney-general.—Every corporation, authorized to transact business in this state, shall file in the office of the secretary of state, annually, on or before December first, a statement authenticated by the signatures of the president and secretary containing the total amount of capital stock authorized, the amount actually issued, whether for cash or for purchase of property, designating what property, the names of all of the directors, and officers, with the date of the election

or appointment, term of office, residence and postoffice address of each, the character of its business and location, giving the street and number, if any, of its principal office in the state, and the name of the agent in charge of said office, upon whom process against the corporation may be served; but this shall not prevent service of process on other agents authorized by law; and for this purpose the secretary of state shall furnish blanks in proper form and safely keep in his office all such statements, and issue to the corporations filing the same his certificate thereof, and also prepare an alphabetical index thereof, which statements and index shall be submitted to the inspection of persons interested, at all proper hours; and every corporation failing to comply with the provisions of this section shall forfeit to the state twenty-five dollars, to be collected by the sheriff of the county where the principal office of said corporation is situated in a civil action to be brought before a justice of the peace, and when collected shall be remitted by the sheriff to the secretary of state after deducting his cost as allowed by law, which he shall collect in addition to the penalty. This section shall not apply to any corporation which is required to file a similar statement in the office of the commissioner of insurance, or the corporation commission.—Rev., 1152; Laws 1907, c. 944.

1830. Secretary of state may call for special reports.—The secretary of state shall have power to call for special reports from corporations, of the same character as their regular reports, at such times as he may deem public interest requires: Provided, no fees shall be charged for filing such special reports.—Rev., 1153.

1831. Liability for making false certificates.—If any certificate made, or any public notice given, by the officers of any corporation, in pursuance of the provisions of this chapter, shall be false in any material representation, all the officers who shall have signed the same, knowing it to be false, shall be jointly and severally liable for all the debts of the corporation contracted while they were stockholders or officers thereof, as a penalty enforceable in the courts of this state only.—Rev., 1154.

1832. Fraud; liability of officers, directors and stockholders for.—In case of fraud by the president, directors, managers or stockholders, in any corporation, the court shall adjudge personally liable to creditors and others injured thereby such of the directors and stockholders as may have been concerned in the fraud.—Rev., 1155.

1833. Who may sue officers and directors personally.—When the officers, directors or stockholders of any corporation shall be liable to pay the debts of the corporation, or any part thereof, any person to whom they are liable may have an action against any one or more of them. And any such officer, director or stockholder shall have the right of equitable contribution in any action for that purpose against any other officer, director or stockholder who is liable with him for any amount which he may have been compelled to pay as provided in this section.—Rev., 1156.

1834. Action by officer for money advanced.—Any officer, director or stockholder who shall pay any debt of a corporation for which he is made liable by the provisions of this chapter, may recover the amount so paid, in an action against the corporation for money paid for its use, in which action only the property of the corporation shall be liable to be taken, and not the property of any stockholder, except as provided in the preceding section.—Rev., 1157.

1835. Assets of corporation first exhausted.—No sale or other satisfaction shall be had of the property of any director or stockholder for any debt of the corporation of which he is such director or stockholder till judgment be obtained therefor against such corporation and execution thereon returned unsatisfied, or it shall be made to appear to the court that the corporation has no property available for the satisfaction of said indebtedness.—Rev., 1158.

6. Capital Stock.

1836. Classes of stock; issued for property or labor.—Every corporation shall have power to create two or more kinds of stock of such classes, with such designations, preferences and voting powers or restriction of qualification thereof as shall be prescribed by those holding two-thirds of its capital stock outstanding; and the power to increase or decrease the stock, as herein elsewhere provided, shall apply to all or any of the classes of stock; and such preferred stock may, if desired, be made subject to redemption at not less than par, at a fixed time and price, to be expressed in the certificate thereof; and the holders thereof shall be entitled to receive, and the corporation shall be bound to pay thereon, a fixed yearly dividend, to be expressed in the certificate, payable quarterly, half yearly, or yearly, before any dividend shall be set apart or paid on the common stock, and such dividends may be made cumulative; and in case of insolvency, its debts or other liabilities shall be paid in preference to the preferred stock. No corporation shall create any preferred stock, except by authority given to the board of directors, by a vote of at least two-thirds of the stock voted at a meeting of the common stockholders, duly called for that purpose. The terms "general stock" and "common stock" are synonymous. When any corporation shall issue stock for labor done or personal property or real estate, or leases thereof, which stock may be so issued by any corporation, in the absence of fraud in the transaction, the judgment of the directors as to the value of such labor, property, real estate or leases shall be conclusive.—Rev., 1159.

1837. Capital stock, how paid; loans to stockholders.—Nothing but money shall be considered as payment of any part of the capital stock of any corporation organized under this chapter, except as herein provided in case of the purchase of property or labor performed, and no loan of money shall be made to a stockholder or officer thereof; and if any such loan be made, the officers who make it, or assent thereto, shall be jointly and severally liable, to the extent of such loan, and interest, for all the debts of the corporation until the repayment of the sum so loaned.—Rev., 1160.

1838. Stock issued full-paid for property purchased; statements to contain the facts.—Any corporation formed under this chapter may purchase mines, manufactories or other property necessary for its business, and issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be full-paid stock, and not liable to any further call, neither shall the holder thereof be liable for any further payment under any of the provisions of this chapter; and in the absence of actual fraud the judgment of the directors as to the value of the property shall be conclusive; and in all statements and reports of the corporation to be published or filed, this stock shall not be stated or reported as being issued for cash paid to the corporation, but shall be reported in this respect according to the facts.—Rev., 1161.

Note.—See s. 1836 *infra*.

1839. Stockholders' liability for stock not fully paid; fiduciaries and pledgors.—Where the capital stock of a corporation shall not have been paid in, and the assets shall be insufficient to satisfy its debts and obligations, each stockholder shall be bound to pay on each share held by him the sum necessary to complete the amount of such share, as fixed by the certificate of incorporation or charter, or such proportion of that sum as shall be required to satisfy such debts and obligations; but no person holding stock in any corporation in this state as executor, administrator, guardian, or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as a stockholder of such corporation; but the person pledging such stock shall be considered as holding the same, and shall be liable as a stock-

holder accordingly, and the estate and funds in the hands of such executor, administrator, guardian, or trustee, shall be liable in like manner, and to the same extent, as the testator or intestate, or the ward, or the person interested in such fund, would have been, had he been living and competent to act and hold the stock in his own name.—Rev., 1162.

1840. Liability of officers failing to make certificate.—If any of the officers shall neglect or refuse to make any reports required of them by law for thirty days after written request so to do by a creditor or stockholder of the corporation, they shall be jointly and severally liable to the person demanding such report, for the amount of his debt, if he be a creditor, or for the amount of his loss, if he be a stockholder.—Rev., 1163.

1841. Decrease of capital stock, how effected; liability of directors and stockholders.—The decrease of capital stock may be effected by retiring or reducing any class of the stock, or by drawing the necessary number of shares by lot for retirement, or by the surrender by every shareholder of his shares, and the issue to him in lieu thereof of a decreased number of shares, or by the purchase at not above par of certain shares for retirement, or by retiring shares owned by the corporation, or by reducing the par value of shares; and when any corporation shall decrease the amount of its capital stock as hereinbefore provided, the certificate decreasing the same shall be published for three weeks successively, at least once in each week, in a newspaper published in the county in which the principal office of the corporation is located; the first publication to be made within fifteen days after the filing of such certificate, and in default thereof the directors of the corporation shall be jointly and severally liable for all the debts of the corporation contracted before the filing of the said certificate, and the stockholders shall also be liable for such sums as they may respectively receive of the amount so reduced: Provided, no such decrease of capital stock shall release the liability of any stockholder, whose shares have not been fully paid, for debts of the corporation theretofore contracted.—Rev., 1164.

1842. Certificates of stock.—Every stockholder shall have a certificate signed by the president and treasurer, or secretary, certifying the number of shares owned by him in such corporation.—Rev., 1165.

1843. Duplicate certificates issued by directors.—Every corporation may issue a new certificate of stock in the place of any certificate theretofore issued by it, alleged to have been lost or destroyed, and the directors authorizing such issue of a new certificate may, in their discretion, require the owner of the lost or destroyed certificate, or his legal representatives, to give the corporation a bond, in such sum as they may direct, as an indemnity against any claim that may be made against such corporation. A new certificate may be issued without requiring any bond when, in the judgment of the directors, it is proper so to do.—Rev., 1166.

1844. Action to compel issuance of duplicate certificate.—Whenever any corporation shall have refused to issue a new certificate of stock in place of one theretofore issued by it, or by any corporation of which it is a successor, alleged to have been lost or destroyed, the owner of the lost or destroyed certificate or his legal representatives may maintain a civil action in the superior court of the county in which the principal office of the corporation is located to compel such corporation to issue a duplicate certificate of stock in the place of the certificate alleged to have been lost or destroyed; and if the issues of fact arising upon the pleadings shall be found in favor of the plaintiff, the court shall make an order requiring the corporation or other party, within such time as it shall designate, to issue and deliver to the plain-

tiff a new certificate for the number of shares of the capital stock of the corporation which shall have been found to be owned by the plaintiff. In making the order the court shall direct that the plaintiff deposit such security as to the court shall appear sufficient to indemnify any person other than the plaintiff, who shall thereafter appear to be the lawful owner of such certificate stated to be lost or destroyed; and the court may also direct publication of such notice, either preceding or succeeding the making of such final order, as it shall deem proper. Any person who shall thereafter claim any rights under the certificate so lost or destroyed shall have recourse to said indemnity, and the corporation shall be discharged from all liability to such person by reason of compliance with the order.—Rev., 1167.

1845. Shares, personal property; how transferred; held as collateral.—The shares of stock in every corporation shall be personal property, and shall be transferable on the books of the corporation in such manner and under such regulations as the by-laws provide; and whenever any transfer of shares shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer.—Rev., 1168.

1846. Assessments upon shares.—The directors of every corporation may, from time to time, make assessments upon the shares of stock subscribed for, not exceeding, in the whole, the par value thereof remaining unpaid; and the sums so assessed shall be paid to the treasurer at such times and by such instalments as the directors shall direct, said directors having given thirty days notice of the assessment and of the time and place of payment, either personally or by mail, or by publication in a newspaper published in the county where the corporation is established.—Rev., 1169.

1847. Shares sold to pay assessments.—If the owner of any shares shall neglect to pay any sum assessed thereon for thirty days after the time appointed for payment, the treasurer, when ordered by the board of directors, shall sell, at public auction, such numbers of the shares of the delinquent owner as will pay all assessments then due from him, with interest, and all necessary incidental charges, and shall transfer the shares sold to the purchaser, who shall be entitled to a certificate therefor.—Rev., 1170.

1848. Notice of sale.—The treasurer shall give notice of the time and place appointed for the sale, and of the sum due on each share, by advertising the same three weeks successively, once in each week, before the sale, in some newspaper published in the county where the principal office of the corporation is located, at the court-house door, and by mailing a notice thereof to the last known postoffice address of the delinquent stockholder.—Rev., 1171.

1849. Certain construction companies may take stock and bonds for labor, materials, etc.; statements to contain the facts.—Corporations having for their object the building, constructing or repairing of railroads, water, gas or electric works, tunnels, bridges viaducts, canals, hotels, wharves, piers, or any like works of internal improvement or public use, or utility, may subscribe for, take, pay for, hold, use and dispose of stock or bonds in any corporation formed for the purpose of constructing, maintaining and operating any such public works; and the directors of any such corporation formed for the purpose of constructing, maintaining and operating any public work of the description aforesaid may accept in payment of any such subscription, or purchase, real or personal property, necessary for the purposes of such corporation, or work, labor and services performed, or materials furnished to, or for, such corporation to the amount of the value thereof, and from time to time issue upon any such subscription or purchase, in such instalments or proportions as such directors may agree upon, full-paid

stock, in full or partial performance of the whole, or any part of such subscription or purchase, and the stock so issued shall be full-paid stock, and not liable to any further call, neither shall the holder thereof be liable for any further payments. And in all statements and reports of the corporation to be published or filed, this stock shall not be stated, or reported, as being issued for cash paid to the corporation, but shall be reported and published in this respect according to the fact.—Rev., 1172.

1850. One corporation may hold stock and securities of another.—Any corporation may purchase, hold, assign, transfer, mortgage, pledge or otherwise dispose of the shares of the capital stock of, or any bonds, securities or evidences of indebtedness created by, any other corporation or corporations of this or any other state, and while owner of such stock may exercise all the rights, powers and privileges of ownership, including the right to vote thereon.—Rev., 1173.

7. Amendments, Surrender and Extension.

1851. Amendments before payment of stock.—It shall be lawful for the incorporators of any incorporation, before the payment of any part of its capital, to file with the secretary of state an amended certificate of incorporation, duly signed by the incorporators named in the original certificate of incorporation, and duly acknowledged or proved, modifying, changing or altering the original certificate of incorporation in whole or in part, which amended certificate of incorporation shall take the place of the original certificate of incorporation, and when recorded in the proper county shall be deemed to have been filed and recorded on the date of filing and recording the original certificate of incorporation: Provided, the officers shall be entitled to the same fees for filing and recording the amended certificate of incorporation as if they were original; but there shall be charged no additional organization tax, except when the certificate of incorporation is amended by increasing the capital stock, in which event an additional organization tax shall be paid upon such increase.—Rev., 1174.

1852. Amendments, generally.—Every corporation, whether organized under a special act of incorporation, or under general laws, and which might now be created under the provisions of this chapter, may change the nature of its business, relinquish one or more branches thereof, or extend its business to such other branches as might have been inserted in its original certificate of incorporation, change its name, increase its capital stock, decrease its capital stock, change the par value of the shares of its capital stock, extend its corporate existence, create one or more classes of preferred stock, and make such other amendment, change or alteration as may be desired, in manner following: The board of directors shall pass a resolution declaring that such change or alteration is advisable, and call a meeting of the stockholders to take action thereon; the meeting shall be held upon such notice as the by-laws provide, and in the absence of such provisions, upon ten days notice, given personally or by mail; if two-thirds in interest of each class of the stockholders having voting powers shall vote in favor of such amendment, change or alteration, a certificate thereof shall be signed by the president and secretary, under the corporate seal, acknowledged or proved, as in the case of deeds to real estate, and such certificate, together with the written assent, in person or by proxy, of two-thirds in interest of each class of such stockholders, shall be filed and recorded in the office of the secretary of state, and upon such filing he shall issue a certified copy thereof, which shall be recorded in the county in which the original certificate of incorporation is recorded, and thereupon the certificate of incorporation shall be deemed to be amended accordingly: Provided, that such certificate of amendment, change or alteration shall contain only such provision as

it would be lawful and proper to insert in an original certificate of incorporation made at the time of making such amendment, and the certificate of the secretary of state, under his official seal, that such certificate and assent have been filed in his office shall be taken and accepted as evidence of such change, or alteration, in all courts and places. And any corporation which could not now be created under the provisions of this chapter may in like manner increase or decrease its capital stock, or change its name.—Rev., 1175.

1853. Change of location of principal office.—The board of directors of any corporation, organized under the laws of this state, may change the location of the principal office of such corporation within this state to any other place within this state, by resolution adopted at a regular or special meeting of such board, by the votes of at least two-thirds of the members of such board: Provided, that no certificate shall be required to be filed of the removal of any office from one point to another in the same town, township or city of the state. Upon the adoption of a resolution as aforesaid, a copy thereof shall be filed in the office of the secretary of state, signed by the president and secretary of such corporation, and sealed with its corporate seal.—Rev., 1176.

1854. Surrender of corporate rights before payment of stock.—The incorporators named in any certificate of incorporation, before the payment of any part of the capital stock, and before beginning the business for which the corporation was created, may surrender all their corporate rights and franchises, by filing in the office of the secretary of state a certificate verified by oath, that no part of the capital stock has been paid, and such business has not been begun, and surrendering all rights and franchises, and thereupon the said corporation shall be dissolved.—Rev., 1177.

1855. Extension of corporate existence.—Any corporation, created by special charter, or under the general law, for any objects which are allowed by this chapter, may extend its corporate existence in the manner prescribed herein: Provided, that if such corporation possesses franchises, powers, privileges, immunities or advantages which could not be obtained under this chapter, such extension shall not continue, renew or extend such franchises, powers, privileges, immunities or advantages, but the filing of the certificate of extension shall operate as a waiver and abandonment of such franchises, powers, privileges and advantages.—Rev., 1178.

8. Corporate Meetings.

1856. Place of meetings; books at principal office; jurisdiction superior court over books.—The meetings of the stockholders of every corporation of this state shall be held at the principal office in this state. The directors may hold their meetings, and have an office and keep the books of the corporation (except the stock and transfer books) outside of the state. Every corporation shall maintain a principal office in this state, and have an agent in charge thereof, wherein shall be kept the stock and transfer books for the inspection of all who are authorized to see the same, and for the transfer of stock. The superior court may, upon proper cause shown, order any or all of the books of said corporation to be forthwith brought within this state, and kept therein at such place and for such time as may be designated in such order, and the charter of any corporation failing to comply with such order may be declared forfeited by the court making such order. And it shall thereupon cease to be a corporation, and all its directors and officers shall be liable to be punished for contempt of court for disobedience of such order.—Rev., 1179.

1857. Transfer and stock books at principal office; only evidence as to stockholders, when; directors' duties.—Every corporation shall keep at its principal and registered office in this state the transfer books, in which the transfer of stock shall be registered, and the stock books, which shall contain the names and addresses of the stockholders, the number of shares held by them respectively, which shall at all times during the usual hours for business be open to the examination of every stockholder; and the books aforesaid shall be the only evidence as to who are the stockholders entitled to examine such books or list, and to vote at elections; and the board of directors shall produce at the time and place of such election such books or list, there to remain during the election, and the neglect or refusal of said directors to produce the same shall render them ineligible to any office at such election.—Rev., 1180.

1858. Transfer book determines right to vote.—In case the right to vote upon any share of stock shall be questioned, the stock books of the corporation shall be referred to, to ascertain who are the stockholders, and in case of a discrepancy between the books, the transfer book shall control and determine who are entitled to vote.—Rev., 1181.

1859. Directors, how elected; quorum for.—All elections for directors shall be by ballot, unless otherwise expressly provided in the charter or certificate of incorporation or by-laws; the poll shall remain open one hour, unless all the stockholders are present in person or by proxy and have sooner voted, or unless all the stockholders waive this provision in writing; the persons receiving the greatest number of votes shall be the directors: Provided, however, that a majority of all the stock issued and outstanding shall be present in person or by proxy.—Rev., 1182.

1860. Votes stockholders entitled to; cumulative voting.—The certificate of incorporation, original or amended, of any corporation now or hereafter organized under the laws of this state, and thereunder issuing or authorized to issue shares of its capital stock, may provide that, at all elections of directors, managers or trustees, each stockholder shall be entitled to as many votes as shall equal the number of his shares of stock multiplied by the number of directors, managers or trustees to be elected, and that he may cast all of such votes for a single director, manager or trustee, or may distribute them among the number to be voted for, or any two or more of them, as he may see fit, which right, when exercised, shall be termed cumulative voting. This section shall not be construed as affecting in anywise the determination of whether or not the right of cumulative voting has been heretofore granted by implication, or the right of cumulative voting, if any, granted specifically by special charter, or certificate of incorporation: Provided, that notwithstanding the absence from the certificate of incorporation or charter of any corporation now or hereafter organized under the laws of this state, and thereunder issuing or authorized to issue shares of its capital stock, of any provision therein conferring upon the stockholders of such corporation the right of cumulative voting in the election of the directors, managers, or trustees of such corporation, as hereinbefore provided, the stockholders of such corporation shall, nevertheless, possess such right, as fully as if conferred by such certificate of incorporation or charter, whenever at the time of the election of the directors, managers, or trustees of such corporation, or any one or more of them, the stock transfer book of such corporation shall disclose, or it shall otherwise appear, that more than one-fourth of all the capital stock of such corporation is owned or controlled by any one person: Provided further, however, that cumulative voting as herein provided for shall not be permitted unless the minority stockholder or stockholders shall openly and publicly announce in the meeting of the

stockholders held for the election of directors, managers or trustees, before the balloting begins, that they, the minority stockholders, will in such election exercise such right of cumulative voting; and no amendment of the certificate of incorporation, charter or by-laws of such corporation which may be hereafter adopted or allowed shall have the effect of abrogating or abridging any right herein conferred.—Rev., 1183; Laws 1907, c. 457.

1861. Votes stockholders entitled in absence of special provision; proxies; transfers within twenty days of election.—Unless otherwise provided in the charter, certificate of incorporation or by-laws of the corporation, at every election each stockholder, whether resident or non-resident, shall be entitled to one vote in person or by proxy, duly authorized in writing, for each share of the capital stock held by him, but no proxy shall be voted on after three years from its date; nor shall any share of stock be voted on at any election which has been transferred on the books of the corporation within twenty days next preceding such election.—Rev., 1184.

1862. Stock held by fiduciaries, pledgees and married women.—Every person holding stock as executor, administrator, guardian or trustee, or in any other representative or fiduciary capacity, may represent the same at all meetings of the corporation, and may vote thereon as a stockholder, with the same effect as if the absolute owner thereof, unless the instrument creating the trust shall provide to the contrary. A married woman holding stock may vote the same, in person or by proxy, in the same manner and with the same effect as if she were a feme sole; and every person who shall pledge his stock as collateral security may, nevertheless, represent the same at all such meetings, and may vote thereon as a stockholder, unless in the transfer to the pledgee on the books of the corporation he shall have expressly empowered the pledgee to vote thereon, in which case only the pledgee or his proxy may represent said stock and vote thereon.—Rev., 1185.

1863. Stock held by life tenant.—Where stock is owned by, or shall be transferred on its record books to, one for life with remainder over, such life tenant at all meetings of such corporation may represent and vote said stock in person or by proxy, in the same manner and with the same effect as if such life tenant was the absolute owner thereof.—Rev., 1186.

1864. Shares belonging to corporation.—Shares of stock of a corporation belonging to said corporation shall not be voted upon directly or indirectly.—Rev., 1187.

1865. Failure to hold election, effect; judge may order.—If the election for directors of a corporation shall not be held on the day designated by the act or certificate of incorporation or by-laws, the directors shall cause the election to be held as soon thereafter as conveniently may be. No failure to elect directors at the designated time shall work any forfeiture or dissolution of the corporation; and if the directors shall fail or refuse for thirty days after receiving a written request for such election from those owning one-tenth of the outstanding shares of stock, to call a meeting for such election, then the judge of the district, or the judge presiding in the courts of the district, in which the principal office of the corporation is located, may, upon the application of any stockholder, and on notice to the directors, order an election, or make such other order as justice may require. The proceedings governing the issuance and hearing of injunctions shall, as far as applicable, govern such hearing.—Rev., 1188.

1866. Jurisdiction of superior court over elections.—The superior court judge, upon application of any person who may be aggrieved by, or complain of, any election, or any proceeding, act or matter in or

touching the same, ten days notice having been given to the adverse party, or to those who are to be affected thereby, of such intended application, shall proceed forthwith, at chambers, in any county in the district in which the principal office of the corporation is situated, to hear the affidavits, proofs and allegations of the parties, or otherwise inquire into the matter or causes of complaint, and thereupon establish the election so complained of, or order a new election, or make such order, and give such relief in the premises as right and justice may require. The proceedings shall be the same as in injunctions, as nearly as may be.—Rev., 1189.

1867. Meetings called by three stockholders, when.—Whenever, for any reason, a legal meeting of the stockholders of any corporation can not be otherwise called, three or more stockholders, having voting powers, may call such meeting by publishing ten days notice of the time, place and purposes of the meeting, in a newspaper published in the county in which the principal office in this state is located, and mailing such notice to all stockholders whose postoffice address is known, or can be ascertained. A meeting called as aforesaid shall be a legal meeting of the corporation, and if there be no officers present, the stockholders may elect officers for the meeting; and the secretary of the meeting shall record the proceedings thereof in the book of minutes of the corporation.—Rev., 1190.

9. Dividends.

1868. When declared; working capital.—The directors of every corporation created under this chapter shall, in January in each year, unless some specific day or days for that purpose be fixed in its charter, certificate of incorporation or by-laws, and in that case then on the days so fixed, after reserving, over and above its capital stock paid in, as a working capital for said corporation, such sum, if any, as shall have been fixed by the stockholders, declare a dividend among its stockholders of the whole of its accumulated profits exceeding the amount so reserved, and pay the same to such stockholders on demand: Provided, that the corporation may, in its certificate of incorporation, or in its by-laws, give the directors power to fix the amount to be reserved as a working capital.—Rev., 1191.

1869. From profits and surplus only; liability of directors; limitations of actions.—No corporation shall declare and pay dividends, except from the surplus or net profits arising from its business, nor when its debts, whether due or not, shall exceed two-thirds of its assets, nor divide, withdraw, or in any way pay to the stockholders, or any of them, any part of its capital stock, or reduce its capital stock, except according to this chapter, and in case of any violation of the provisions of this section, the directors under whose administration the same may happen shall be jointly and severally liable, at any time within six years after paying such dividend, to the corporation and to its creditors, in the event of its dissolution or insolvency, to the full amount of the dividend so paid, or capital stock so divided, withdrawn, paid out or reduced, with interest on the same from the time such liability accrued: Provided, that any director who may have been absent when the same was done, or who may have dissented from the act or resolution by which the same was done, may exonerate himself from such liability by causing his dissent to be entered at large on the minutes of the directors, at the time the same was done, or forthwith after he shall have notice of the same.—Rev., 1192.

10. Foreign Corporations.

1870. May do business here.—Any corporation created by any other state, or by any foreign state, kingdom or government may acquire by devise or otherwise and hold, mortgage, lease and convey real estate in

this state for the purpose of prosecuting its business, or objects, or such real estate as it may acquire by way of mortgage or otherwise in the payment of debts due such corporation: Provided, such foreign state, kingdom or government, under whose laws such corporations were created, shall not be at the time of such purchase at war with the United States.—Rev., 1193.

1871. To file charters and statement with secretary of state; fees therefor; forfeiture.—Every foreign corporation before being permitted to do business in this state, railroad, banking, insurance, express and telegraph companies excepted, shall file in the office of the secretary of state a copy of its charter or articles of agreement, attested by its president and secretary, under its corporate seal, and a statement attested in like manner of the amount of its capital stock authorized, the amount actually issued, the principal office in this state, the name of the agent in charge of such office, the character of the business which it transacts and the names and postoffice addresses of its officers and directors. And such corporation shall pay to the secretary of state, for the use of the state, ten cents for every one thousand dollars of the total amount of the capital stock authorized to be issued by such corporation, but in no case less than ten dollars nor more than one hundred dollars. And every corporation failing to comply with the provisions of this section shall forfeit to the state five hundred dollars, to be recovered, with costs, in an action to be prosecuted by the attorney-general, who shall prosecute such actions whenever it shall appear that this section has been violated.—Rev., 1194.

11. Dissolution.

1872. Voluntary.—Whenever, in the judgment of the board of directors, it shall be deemed advisable and most for the benefit of such corporation that it should be dissolved, the board, within ten days after the adoption of a resolution to that effect by a majority of the whole board, at any meeting called for that purpose, of which meeting every director shall have received at least three days notice, shall cause notice of adoption of such resolution to be mailed to each stockholder residing in the United States, to his last known postoffice address, and also, beginning within said ten days, cause a like notice to be published in a newspaper published in the county wherein the corporation shall have its principal office, at least four weeks successively, once a week, next preceding the time appointed for the same, of a meeting of the stockholders to be held at the office of the corporation, to take action upon the resolutions so adopted by the board of directors, and which meeting may, on the day so appointed, by consent of a majority in interest of the stockholders present, be adjourned from time to time for not less than eight days at one time, of which adjourned meeting notice by advertisement in said newspaper shall be given; and if at any such meeting two-thirds in interest of all the stockholders shall consent that a dissolution shall take place, and signify their consent in writing, such consent, together with the list of the names and residences of the directors and officers, certified by the president and the secretary or treasurer, shall be filed in the office of the secretary of state, who upon being satisfied by due proof that the requirements aforesaid have been complied with, shall issue a certificate that such consent has been filed and the board of directors shall cause such certificate to be recorded in the office of the clerk of the superior court of the county in which the principal office of the corporation is located, and published four weeks successively, at least once a week, in a newspaper published in said county; and upon the filing in the office of the secretary of state of an affidavit of the manager or publisher of such newspaper that said certificate has been so published, the corporation shall be dissolved, and the board shall proceed to settle up and adjust

its business and affairs. Whenever all the stockholders shall consent in writing to a dissolution, no meeting or notice thereof shall be necessary, but on filing said consent in the office of the secretary of state he shall forthwith issue a certificate of dissolution, which shall be published as above provided, and recorded in the office of the clerk of the superior court of the county in which the principal office of the corporation is located.—Rev., 1195.

1873. Involuntary, at instance of private persons.—Corporations may be dissolved by civil action, instituted by the corporation, a stockholder, or creditor, or by authority of the attorney-general in the name of the state, in the cases hereinafter mentioned, to-wit:

(1) For any abuse of its powers to the injury of the public or of the stockholders, or of its creditors or debtors.

(2) For nonuser of its powers for two years or more consecutively.

(3) When it shall become insolvent, or shall suspend its ordinary business for want of funds to carry on the same, or be in imminent danger of insolvency, or has forfeited its corporate rights.

(4) Upon any conviction of the company of a criminal offense if such offense be persistent.—Rev., 1196.

Note.—For obtaining leave of attorney-general, see ss. 828, 829 of the Revisal.

1874. Attorney-general may sue to restrain ultra vires acts; to compel accounts; to remove officers; to preserve property.—An action may be brought by the attorney-general in the name of the state, upon his own information, or upon the complaint of any private party, against the parties offending in the following cases: To restrain by injunction any corporation from assuming or exercising any franchise, or transacting any business not allowed by its charter; to restrain any person from exercising corporate franchises not granted; to bring directors, managers, and officers of a corporation, or the trustees of funds given for a public or charitable purpose, to an account for the management and disposition of the property confided to their care; to remove such officers or trustees upon proof of gross misconduct; to secure, for the benefit of all interested, the property or funds aforesaid; to set aside and restrain improper alienations thereof, and generally to compel the faithful performance of duty, and prevent all malversations, speculations and waste.—Rev., 1197.

Note.—For obtaining leave of attorney-general, see ss. 828, 829 of the Revisal.

1875. Involuntary, at instance of attorney-general.—An action may be brought by the attorney-general in the name of the state against a corporation for the purpose of vacating or annulling the act or certificate, or renewal of the same, creating the corporation, on the ground that such act or certificate or renewal was procured upon some fraudulent suggestion, or concealment of a material fact, by the persons incorporated, or by some of them or with their knowledge and consent, or annulling the existence of a corporation, other than municipal, whenever such corporation shall—

(1) Offend against the act creating, altering, or renewing such corporation; or,

(2) Violate any law by which such corporation shall have forfeited its charter by abuse of its powers; or,

(3) Whenever it shall have forfeited its privileges or franchises by failure to exercise its power; or,

(4) Whenever it shall have done or omitted any act which amounts to a surrender of its corporate rights, privileges and franchises; or,

(5) Whenever it shall exercise a franchise or privilege not conferred upon it by law; or,

(6) For nonuser of its powers for two or more years consecutively; or,

(7) For insolvency, manifested by the return of an execution unsatisfied, upon a judgment against the company docketed in the superior court of the county where it has its principal place of business.

And it shall be the duty of the attorney-general, whenever he shall have reason to believe that any of these acts or omissions can be established by proof, to bring the action, in every case of public interest, and also in every other case in which satisfactory security shall be given to indemnify the state against the costs and expenses to be incurred thereby.—Rev., 1198.

1876. Service of summons in actions for.—In any action for the dissolution of a corporation, or for the appointment of a receiver thereof, the summons must be served on the corporation by service on an officer or agent thereof upon whom other process can be served, and shall be served on the stockholders, creditors, dealers and others interested in the affairs of the company, by publishing a copy thereof at least weekly for not less than three successive weeks in some newspaper printed in the county in which such corporation has its principal place of business, or if there can be no such newspaper published, then by posting a copy of such summons at the door of the court-house of such county, and publishing a copy thereof for the time and in the manner aforesaid in the newspaper published nearest the county-seat of the county in which such corporation has its principal place of business, or in some newspaper published in the city of Raleigh; and such publication shall be deemed and held sufficient service on all the stockholders, creditors of, or dealers with, such corporation, and upon the corporation, if no officer can after due diligence be found in the state and it shall have no process agent in the state; and all such stockholders, creditors or dealers or other parties interested may intervene in said proceedings and become parties thereto for themselves, or for others in like interest, under such rules as the court for the purpose of justice shall prescribe.—Rev., 1199.

1877. Corporate existence continued three years for winding up.—All corporations whose charters shall expire by their own limitation, or shall be annulled by forfeiture or otherwise, shall nevertheless be continued bodies corporate for the term of three years after the time when they would have been so dissolved, for the purpose of prosecuting and defending actions by or against them, and of enabling them gradually to settle and close their concerns, to dispose of and convey their property, and to divide their capital; but not for the purpose of continuing the business for which such corporation may have been established: Provided, that in any pending action the court, in its discretion, may extend the time for winding up the affairs of such corporation.—Rev., 1200.

1878. Upon dissolution, directors to be trustees; powers and duties; debts not extinguished.—Upon the dissolution in any manner of any corporation, unless otherwise directed by an order of the court, the directors shall be trustees thereof, with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying its debts, as far as such moneys and property shall enable them. They shall have power to meet, and act under the by-laws of the corporation, and, under regulations to be made by a majority of said trustees, to prescribe the terms and conditions of the sale of such property, and may sell all, or any part for cash, or partly on credit, or take mortgages or bonds for part of the purchase price for all or any part of said property. In case of the dissolution of a corporation, the debts due to and from it shall not be thereby extinguished.—Rev., 1201.

1879. Directors as trustees may sue and be sued.—The directors, constituted trustees as aforesaid, shall have power to sue for and recover the aforesaid debts and property, in the name of the corporation, and shall be suable by the same name for the debts owing by such corporation, and shall be jointly and severally responsible for

such debts, only to the amount of moneys and property of the corporation which shall come to their hands or possession as such trustees.—Rev., 1202.

1880. Jurisdiction of superior court; may appoint directors or others as receivers; powers and duties.—Whenever any corporation shall be dissolved in any manner whatsoever, the superior court, on application of any creditor, or stockholder, at any time, may either continue the directors trustees as aforesaid, or appoint one or more persons to be receivers of such corporations, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation, or otherwise, all suits necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by such corporation, if in being, that may be necessary for the final settlement of its unfinished business; and the powers of such trustees or receivers may be continued as long as the court shall think necessary for such purposes.—Rev., 1203.

1881. Jurisdiction of judge.—The judge of the superior court shall have jurisdiction of such application and of all questions arising in the proceedings thereon, and make such orders, injunctions, and decrees therein as justice and equity shall require at any place in the district.—Rev., 1204.

1882. Injunction; when notice and undertaking required.—An injunction to suspend the general and ordinary business of a corporation or to appoint a receiver shall not be granted without due notice of the application therefor to the corporation, except where the state is a party to the proceeding, unless the plaintiff shall give a written undertaking, executed by two sufficient sureties, to be approved by the judge, to the effect that the plaintiff will pay all damages, not exceeding the sum to be mentioned in the undertaking, which such corporation may sustain by reason of the injunction, or the appointment of the receiver, if the court shall finally decide that the plaintiff was not entitled thereto. The damages may be ascertained by a reference, or otherwise, as the court shall direct.—Rev., 1205.

Note.—See s. 818 of Revisal.

1883. Wages for two months lien on assets.—In case of the insolvency of any corporation the laborers and workmen and all persons doing labor or service of whatever character in the regular employment of such corporation, shall have a first and prior lien upon the assets thereof for the amount of wages due to them respectively for all labor, work, and services done, performed or rendered within two months next preceding the date when proceedings in insolvency shall be actually instituted and begun against such insolvent corporation, which lien shall be prior to all other liens that can or may be acquired upon or against such assets.—Rev., 1206.

1884. Distribution of funds.—After payment of all allowances, expenses and costs, and the satisfaction of all special and general liens upon the funds of the corporation to the extent of their lawful priority, the creditors shall be paid proportionately to the amount of their respective debts, and the creditors shall be entitled to distribution on debts not due, making in such case a rebate of interest, when interest is not accruing on the same, and the surplus funds, if any, after payment of the creditors and the costs, expenses and allowance aforesaid, and the preferred stockholders, according to their respective shares, and if there still be a surplus it shall be divided and paid to the general stockholders proportionately, according to their respective shares. Upon the distribution of the assets of an insolvent corporation, judgment of dissolution shall be entered.—Rev., 1207.

1885. Dissolution does not abate actions; receivers to be notified.—Any action now pending, or to be hereafter begun, against any corporation which may become dissolved before final judgment, shall not abate by reason thereof, but no judgment shall be entered therein, except upon notice to the trustees or receivers of the corporation.—Rev., 1208.

1886. Judgment of forfeiture against a corporation.—If it shall be adjudged that a corporation against which an action shall have been brought, has forfeited by neglect, abuse, or surrender, its corporate rights, privileges and franchises, judgment shall be rendered that the corporation be excluded from such corporate rights, privileges and franchises, and that the corporation be dissolved.—Rev., 1209.

1887. Persons claiming to be corporation liable for costs of action.—If judgment be rendered in such action against a corporation, or against persons claiming to be a corporation, the court may cause the costs therein to be collected by execution against the persons claiming to be a corporation, or by attachment or process against the directors or other officers of such corporation.—Rev., 1210.

1888. Clerk superior court to file copy of judgment dissolving corporation with secretary of state; costs thereof.—A copy of every judgment dissolving a corporation or forfeiting its charter shall be forthwith filed by the clerk of the court, in the office of the secretary of state, and a note thereof shall be made by the secretary of state, on the charter or certificate of incorporation, and in the index thereof, and be published by him in the annual report hereinafter provided for, the cost of which shall be taxed by the clerk of the superior court, in the action wherein the corporation is dissolved.—Rev., 1211.

12. Execution.

1889. How issued and on what levied.—If any judgment shall be rendered against a corporation, the plaintiff may sue out such executions against the property of a corporation as is provided by law to be issued against the property of natural persons, which executions may be levied on the current money as on the goods, chattels, lands and tenements of such corporation.—Rev., 1212.

1890. Agent must furnish information as to property to officer with.—Every agent or person having charge or control of any property of a corporation, on request of any public officer having for service a writ of execution against it, shall furnish to him the names of the directors and officers thereof, and a schedule of all its property, including debts due or to become due to it, so far as he may have knowledge of the same.—Rev., 1213.

1891. Shares of stock sold under.—Any share or interest in any bank, insurance company, or other joint stock company, that is or may be incorporated under the authority of this state, or incorporated or established under the authority of the United States, belonging to the defendant in execution, may be taken and sold by virtue of such execution, in the same manner as goods and chattels.—Rev., 1214.

1892. Officer entitled to information as to stock.—The clerk, cashier, or other officer of such company, who has at the time the custody of the books of the company, shall, upon exhibiting to him the writ of execution, give to the officer having such writ a certificate of the number of shares or amount of the interest held by the defendant in such company; and if he shall neglect or refuse so to do, or if he shall wilfully give a false certificate thereof, he shall be liable to the plaintiff for the amount due on said execution, with costs.—Rev., 1215.

1893. Against debts due corporation; liability of agents refusing compliance.—If any officer holding an execution shall be unable to find other property belonging to the corporation liable to execution, he or

the judgment creditor may elect to satisfy such execution in whole or in part, out of any debts due to the corporation; and it shall be the duty of any agent or person having custody of any evidence of such debt, to deliver the same to the officer, for the use of the creditor, and such delivery, with a transfer to the officer in writing, for the use of the creditor, and notice to the debtor shall be a valid assignment thereof; and such creditor may sue for and collect the same in the name of the corporation, subject to such equitable setoffs on the part of the debtor as in other assignments; and every agent or person who shall neglect or refuse to comply with the provisions of this and the last preceding section, shall be himself liable to pay to the execution creditor the amount due on said execution, with costs.—Rev., 1216.

1894. Proceedings when custodian of corporate books is a nonresident.—When the clerk, cashier, or other officer of any corporation incorporated under the laws of this state, who has the custody of the books of registry of the stock thereof, shall be nonresident in this state, it shall be the duty of the sheriff receiving a writ of execution issued out of any court of this state against the goods and chattels of a defendant in execution holding stock in such company, to send by mail a notice in writing, directed to such nonresident clerk, cashier, or other officer, at the postoffice nearest his reputed place of residence, stating in such notice that he, the said sheriff, holds such writ of execution, and out of what court, at whose suit, for what amount, and against whose goods and chattels such writ has been issued, and that by virtue of such writ he, the sheriff, seizes and levies upon all the shares of stock of such company held by the defendant in execution on the day of the date of such written notice; and it shall also be the duty of such sheriff on the day of mailing such notice, to affix and set up upon any office or place of business of such company, within his county, a like notice in writing, and on the same day to serve like notice in writing upon the president and directors of said company, or upon such of them as reside in his county, either personally or by leaving the same at their respective places of abode; and the sending, setting up and serving of such notices in the manner aforesaid, shall constitute such levy so made a valid levy of such writ upon all shares of stock in such company held by the defendant in execution, which have not at the time of the receipt of such notice by said clerk, cashier, or other officer, who has custody of the books of registry of the stocks thereof, been actually transferred by the defendant; and thereafter any transfer or sale of such shares by the defendant in execution shall be void as against the plaintiff in said execution, or any purchaser of such stock at any sale thereunder.—Rev., 1217.

1895. Duty and liability of nonresident custodian of corporate books.—The nonresident clerk, cashier, or other officer in such company, to whom notice in writing is sent, as prescribed in the preceding section, shall thereupon send forthwith, by mail or otherwise, to the officer having such writ, a statement of the time when he received such notice and a certificate of the number of shares held by the defendant in such company at the time of the receipt by him of such notice, not actually transferred on the books of said company; and the said sheriff, or other officer, shall, on receipt by him of such certificate, insert the number of such shares in the inventory attached to said writ; and if such clerk, cashier, or other officer in such company, neglect to send such certificate as aforesaid, or if he shall wilfully send a false certificate, he shall be liable to the plaintiff for double the amount of all damages occasioned by such neglect or false certificate, to be recovered in an action against him; but the neglect to send, or miscarriage of such certificate, shall not impair the validity of the levy upon the stock.—Rev., 1218.

13. Receivers.

1896. When appointed.—Whenever any corporation shall become insolvent, or shall suspend its ordinary business for want of funds to carry on the same, or be in imminent danger of insolvency, or has forfeited its corporate rights, or its corporate existence shall have expired by limitation, a receiver may be appointed by the court under the same regulations as are provided by law for the appointment of receivers in other cases.—Rev., 1219.

Note.—See also s. 1880 *infra*.

1897. Debts provided for, receiver discharged.—Whenever a receiver shall have been appointed, and it shall afterwards appear that the debts of the corporation have been paid, or provided for, and that there remains, or can be obtained by further contributions, sufficient capital to enable it to resume its business, the court may, in its discretion, a proper case being shown, discharge the receiver, and decree that its property, rights, franchises and effects shall revert to the corporation, and thereafter the corporation may resume control of, and enjoy the same, as fully as if the receiver had never been appointed.—Rev., 1220.

1898. Reorganization after receiver discharged.—Whenever a majority in interest of the stockholders of such corporation shall have agreed upon a plan for the reorganization of the corporation and a resumption by it of the management and control of its property and business, such corporation may, with the consent of the court, upon the reconveyance to it of its property and franchises, either by deed or decree of the court, mortgage the same for such amount as may be necessary for the purposes of such reorganization; and may issue bonds or other evidences of indebtedness, or additional stock, or both, and use the same for the full or partial payment of the creditors who will accept the same, or otherwise dispose of the same for the purposes of the reorganization.—Rev., 1221.

1899. Powers and bond.—Such receiver shall have full power and authority to demand, sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes, and property of every description of the corporation, foreclose mortgages, deeds of trust and other liens executed to the corporation, and to institute suits for the recovery of any estate, property, damages or demands existing in favor of the corporation, and to appoint agents under him, and to do all other acts which might be done by such corporation, if in being, that may be necessary for the final settlement of the unfinished business of the corporation; and the powers of such receiver may be continued as long as the court shall think necessary for the purposes aforesaid, and the receiver shall have power to sell, convey and assign all the said estate, rights and interest, and shall hold and dispose of the proceeds thereof under the direction of the court. The word receiver as used in this chapter shall be construed to include receivers and trustees appointed, as provided in this chapter. Every receiver shall, before acting, enter into such bond and comply with such terms as the court may prescribe.—Rev., 1222.

1900. Majority may act; removal of; vacancies.—Every matter and thing required to be done by receivers or trustees shall be good and effectual, to all intents and purposes, if performed by a majority of them; and the court may remove any receiver or trustee and appoint another in his place, or fill any vacancy which may occur.—Rev., 1223.

1901. Property to vest in.—All the real and personal property of an insolvent corporation, wheresoever situated, and all its franchises, rights, privileges and effects shall, upon the appointment of a receiver, forthwith vest in him, and the corporation shall be divested of the title thereto.—Rev., 1224.

1902. Inventory.—Such receiver, within thirty days after his appointment, shall lay before the court a full and complete inventory of all estate, property and effects of the corporation, its nature and probable value, and an account of all debts due from and to it, as nearly as the same can be ascertained, and make a report to the superior court of his proceedings, at every civil term thereof during the continuance of the trust.—Rev., 1225.

1903. Compensation.—Before distribution of the assets of an insolvent corporation among the creditors or stockholders, the court shall allow a reasonable compensation to the receiver for his services, not to exceed five per cent upon receipts and disbursements, and the costs and expenses of administration of his trust, and the costs of the proceedings in said court to be first paid out of said assets.—Rev., 1226.

1904. May send for persons and papers; penalty for refusing to answer.—Such receiver shall have power to send for persons and papers, and to examine any persons, including the creditors and claimants, and the president, directors, and other officers and agents of the corporation, on oath or affirmation (which oath or affirmation the receiver may administer), respecting its affairs and transactions and its estate, money, goods, chattels, credits, notes, bills, and choses in action, real and personal estate and effects of every kind; and also respecting its debts, obligations, contracts and liabilities, and the claims against it; and if any person shall refuse to be sworn or affirmed, or to make answers to such questions as may be put to him, or refuse to declare the whole truth touching the subject matter of the said examination, the court may, on report of the receiver, commit such person as for contempt.—Rev., 1227.

1905. Time limit for creditors to present claims.—The court may limit the time within which creditors shall present and make proof to such receiver of their respective claims against the corporation, and may bar all creditors and claimants failing so to do within the time limited from participating in the distribution of the assets of the corporation. The court may also prescribe what notice, by publication or otherwise, shall be given to creditors of such limitation of time.—Rev., 1228.

1906. Claims, how presented and proved; power and duty of receiver.—Every claim against an insolvent corporation shall be presented to the receiver in writing; and the claimant, if required, shall submit himself to such examination in relation to the claim as the receiver shall direct, and shall produce such books and papers relating to the claim as shall be required; and the receiver shall have power to examine, under oath or affirmation, all witnesses produced before him touching the claims, and shall pass upon and allow or disallow the claims or any part thereof, and notify the claimants of his determination.—Rev., 1229.

1907. Claims reported to court; exceptions in ten days; right to jury trial.—It shall be the duty of such receiver to report to the term of the superior court subsequent to any finding by him as to any claim against the corporation, and exceptions thereto may be filed by any person interested, within ten days after notice of such finding by the receiver, and not later than within the first three days of the said term; and if, on any exception so filed, a jury trial shall be demanded, it shall be the duty of the court to prepare a proper issue and submit the same to the jury; and if such demand is not made in the exceptions to the report, the right to a jury trial shall be deemed to have been waived. The judge may, in his discretion, extend the time for filing such exceptions.—Rev., 1230.

1908. May become plaintiff in pending actions.—Such receiver shall, upon application by him, be substituted as party plaintiff or complain-

ant in the place and stead of the corporation, in any suit or proceeding which was pending at the time of his appointment.—Rev., 1231.

1909. Property sold pending litigation; fund reserved.—When the property of an insolvent corporation is at the time of the appointment of a receiver incumbered with mortgages or other liens, the legality of which is brought in question and the property is of a character materially to deteriorate in value pending the litigation, the court may order the receiver to sell the same, clear of incumbrances, at public or private sale, for the best price that can be obtained, and pay the money into the court, there to remain subject to the same liens and equities of all parties in interest as was the property before sale, to be disposed of as the court shall direct.—Rev., 1232.

Note.—For service of process, actions for appointment of receivers, see s. 1876 infra.
For bond before appointing receiver, see s. 1882 infra.

14. Taxes and Fees.

1910. State taxes; organization, amendments, dissolution, etc.—On filing any certificate or other paper, relative to corporations, in the office of the secretary of state, the following taxes shall be paid to the state treasurer, for the use of the state: For certificates of incorporation, twenty cents for each thousand dollars of the total amount of capital stock authorized, but in no case less than twenty-five dollars; increase of capital stock, twenty cents for each thousand dollars of the total increase authorized, but in no case less than twenty dollars; extension or renewal of corporate existence of any corporation, the same as required for the original certificate of organization by this chapter; change of name, change of nature of business, amended certificate of incorporation (other than those authorizing increase of capital stock), decrease of capital stock, increase or decrease of par value of, or number of, shares, twenty dollars; for filing list of officers and directors, one dollar; dissolution of corporation, change of principal place of business, five dollars: Provided, that no taxes shall be required to be paid by any benevolent, religious, educational, or charitable society or association having no capital stock; and these taxes shall not be cumulative, but when two or more taxes would have been incurred at the same time, the tax for all shall be the largest single tax.—Rev., 1233.

1911. Fees to secretary of state and clerk of superior court.—The secretary of state shall collect and retain the following fees, viz.: For recording the certificate of incorporation, one dollar for first three copy sheets, and ten cents for each copy sheet in excess thereof, and for official seal fifty cents; for copying, the same fees as for recording. There shall be paid the clerk of the superior court for recording the certificate of incorporation a fee of three dollars.—Rev., 1234.

1912. Tax on bills creating private corporations; copy to be filed with secretary of state before organization.—Every bill introduced in either house of the general assembly to incorporate any private corporation or railroad company, or to amend the charter of such corporation, shall be accompanied by a receipt from the state treasurer, showing that there has been paid an organization tax in double the amount prescribed for corporations organized under this chapter, and in addition thereto each private corporation (railroad, insurance and banking companies excepted) shall, before its organization, file and have recorded a copy of the bill creating it in the office of the secretary of state, and shall become subject to the provisions of this chapter.—Rev., 1235.

1913. Corporate property liable for taxes, though in receiver's hands.—Whenever taxes are duly assessed, charged and extended against any corporation having chartered rights, or doing business in this state,

or having property in this state, or against any person resident in this state or doing business, or having property in this state, and the tax list is in the hands of any officer or tax collector, it shall be competent for such officer or tax collector, whenever said taxes, whether listed or unlisted, are due and unpaid, to levy upon, seize and take into his possession such part of the property belonging to such person or corporation as may be necessary to pay such taxes listed or unlisted, whether the property of such corporation or person be in the hands of a receiver duly appointed or not.—Rev., 1236.

1914. Tax collector need not obtain order of court though property is in receiver's hands.—In all cases provided for in the preceding section, it shall not be necessary for such officer or tax collector to apply and obtain from the court appointing such receiver, or having jurisdiction of the property of the receiver, an order for the payment of such taxes, but the same may be collected as aforesaid, by distraint and seizure, as if the property or corporation was not in the hands of a receiver. This section and the preceding section shall apply to all taxes, whether state, county, town, or municipal; and shall be liberally construed in favor of, and in furtherance of, the collection of said taxes.—Rev., 1237.

15. Reorganization.

1915. Corporations whose property and franchises sold under order of court or execution.—Whenever the property and franchises of a corporation shall be sold under a judgment or decree of a court of this state, or of the circuit court of the United States, or under execution, to satisfy a mortgage debt or other encumbrance thereon, such sale shall vest in the purchaser all the right, title, interest and property of the parties to the action in which such judgment or decree was made, to said property and franchises so sold, subject to all the conditions, limitations and restrictions of said corporation; and such purchaser and his associates, not less than three in number, shall thereupon become a new corporation, by such name as said persons shall select, who shall be the stockholders in the ratio of the purchase money by them respectively contributed; and shall be entitled to all the rights and franchises and be subject to all the conditions, limitations and penalties of the said corporation whose property and franchises shall have been so sold. In the event of the sale of a railroad in foreclosure of a mortgage or deed of trust, whether under a decree of court or otherwise, the corporation created by or in consequence of such sale shall succeed to all the franchises, rights and privileges of said original corporation only when such sale is of all the railroad owned by the company and described in the mortgage or deed of trust, and when said railroad is sold as an entirety.—Rev., 1238.

1916. New corporators to meet and organize.—The persons for, or on whose account, any such property and franchises may have been purchased, shall meet within thirty days after the conveyance made by virtue of said process, or decree, shall have been delivered, written notice of the time and place of said meeting having been given to each of said several persons at least ten days before said meeting, and organize said new corporation.—Rev., 1239.

1917. Duties and powers of meeting.—At such meeting the said persons shall adopt a corporate name and corporate seal, determine the amount of the capital stock of said corporation, and shall have power and authority to make and issue certificates of stock in shares of such amounts as they see fit. The said corporation may then, or at any time thereafter, create and issue preferred stock to such an amount, and at such time, as they may deem necessary.—Rev., 1240.

1918. Certificate to be filed with secretary of state.—It shall be the duty of such new corporation, within one month after its organization,

to make certificate thereof, under its common seal, attested by the signature of its president, specifying the date of such organization, the name so adopted, the amount of capital stock, and the name of its president and directors, and transmit the said certificate to the secretary of state, to be filed and recorded in his office, and there remain of record; and a certified copy of such certificate so filed shall be recorded in the office of the clerk of the superior court of the county in which is located the principal office of the said corporation, and shall be the charter and evidence of the corporate existence of said new corporation: Provided, that nothing contained in this chapter shall divest, or in any manner impair, the lien of any prior mortgage, or other encumbrance upon the property or franchises, conveyed under the sale of said property or franchises, when by the terms of the process or decree under which the sale was made, or by operation of law, the said sale is made subject to the lien of any such prior mortgage or other encumbrance: And provided, that no such sale and conveyance or organization of such new corporation shall in anywise affect or impair any rights of any person, body politic or corporate, not a party to the action in which the aforesaid decree was made, nor of the said party, except so far as determined by said decree: And provided, also, that when any trustee shall be made a party to such action and his cestui que trust for any reason satisfactory to the court in which the action may be, shall not be made a party thereto, the rights and interest of such cestui que trust shall be concluded by such decree.—Rev., 1241.

16. Miscellaneous Provisions.

1919. Name of corporation to be displayed.—The name of every corporation shall be at all times conspicuously displayed at the entrance of its principal office in this state, and in default thereof for sixty days the corporation shall be liable to a penalty of one hundred dollars, to be recovered with costs, by the state, in an action to be prosecuted by or under the direction of the attorney-general.—Rev., 1242.

1920. Resident process agent required; in absence, service upon secretary of state sufficient; fees.—Every corporation having property or doing business in this state, whether incorporated under its laws or not, shall have an officer or agent in this state, upon whom process in all actions or proceedings against it can be served; and any corporation failing to comply with the provisions of this section shall be liable to a forfeiture of its charter, or to the revocation of its license to do business in this state. In any such case, process is in any action or proceedings against such corporation, may be served upon the secretary of state by leaving a true copy thereof with him, and he shall mail the said copy to the president, secretary or other officer of the corporation, upon whom, if residing in this state, service could be made; and for the service to be performed by the said secretary, he shall receive a fee of fifty cents, to be paid by the party at whose instance the service is made.—Rev., 1243.

1921. Secretary of state to annually publish list of corporations created.—The secretary of state shall annually compile from the records of his office, and publish a complete list, in alphabetical order, of existing domestic corporations and of the original and amended certificates of incorporation filed during the preceding year, together with the location of the principal office of each in this state, the name of the agent in charge thereof, the amount of authorized capital stock, the amount with which business is to be commenced, the amount issued, the date of filing the certificate, and the period for which the corporation is to continue.—Rev., 1244.

1922. Mutual corporations may create stock.—The members of any mutual corporation may provide for and create a capital stock of such corporation, upon the consent in writing of all the members of the corporation, may provide for the payment of such stock, and fix and prescribe the rights and privileges of the stockholders therein not inconsistent with law.—Rev., 1245.

1923. Forfeiture by failure for two years to organize; or after organization, to act; duty of secretary of state and attorney-general.—When any act shall have been passed, or certificate of incorporation, as provided in this chapter, shall have been recorded, creating a body corporate, and the incorporators for two years shall neglect or fail to organize the company and carry into effect the intent of the act, or when organized, if they at any time for two years together shall cease to act, then such disuse of their corporate privileges and powers shall be deemed and taken as a forfeiture of the charter. And if, after thirty days notice by the secretary of state, such corporation shall fail to surrender its corporate rights, or to dissolve, in the manner provided in this chapter, the secretary of state shall report such corporation to the attorney-general, who shall institute an appropriate action for the dissolution of such corporation.—Rev., 1246.

1924. Meaning of "judge," "court," etc.—Whenever the words "court," "superior court," or "judge of the superior court" appear in this chapter, they shall be construed to mean the judge of the superior court resident of the district or holding the courts by rotation, exchange, or appointment, of the district wherein such corporation may have its principal place of business.—Rev., 1247.

1925. Amendments to certain charters validated.—All amendments to the plan of incorporation of any corporation which was organized under the provisions of the general laws of North Carolina prior to the passage of the act entitled "An act to revise the corporation law of North Carolina," being chapter two, public laws of one thousand nine hundred and one, are hereby declared to be valid in all respects, whether such amendments have been made in accordance with the provisions of chapter three hundred and eighty of the public laws of one thousand eight hundred and ninety-three or in accordance with the provisions of chapter two of the public laws of one thousand nine hundred and one; but no amendment shall be validated by this section unless it is an amendment of such nature as is authorized to be made under the provisions of chapter two of public laws of one thousand nine hundred and one.—Rev., 1248.

Note.—Corporate bonds may be sold for less than par, see s. 1951 of the Revisal.

CHAPTER XIX.

COSTS.

1. Generally.

1926. What allowed.—To either party for whom judgment shall be given there shall be allowed as costs his actual disbursements for fees to the officers, witnesses, and other persons entitled to receive the same.—Rev., 1249.

1927. Summary judgment for uncollected.—If any officer, to whom fees are payable by any person, shall fail to receive them at the time the service is performed, he may have judgment therefor on motion to the court in which the action is or was pending, upon twenty days notice to the person to be charged, at any time within one year after the termination of the action in which the same was performed. If

the motion for judgment be in behalf of the clerk of the superior court, it shall be made to the judge of the court in or out of term.—Rev., 1250.

1928. Judgment and execution for, against sureties on prosecution or appeal bond.—Whenever an action shall be brought in any court in which security shall be given for the prosecution thereof, or when any case shall be brought up to a court by an appeal or otherwise, in which security for the prosecution of the suit shall have been given, and judgment shall be rendered against the plaintiff for the costs of the defendant, the appellate court, upon motion of the defendant, shall also give judgment against the surety for said costs, and execution may issue jointly against the plaintiff and his surety.—Rev., 1251.

1929. Executions for, when issued; irregular if not itemized.—The clerks of the supreme, superior and criminal courts, where suits are determined and the fees are not paid by the party from whom they are due, shall sue out executions, directed to the sheriff of any county in the state, who shall levy them as in other cases; and to the said execution shall be annexed a bill of costs, written in words, so as plainly to show each item of costs, and on what account it is taxed; and all executions for costs, issuing without such a bill annexed, shall be deemed irregular, and may be set aside as to the costs, at the return term, at the instance of him against whom it is issued.—Rev., 1252.

1930. Juror's tax fees.—On every indictment or criminal proceeding, tried or otherwise disposed of in the superior, or criminal courts, the party convicted, or who shall be adjudged to pay the costs, shall pay a tax of two dollars. In every civil action in any court of record, the party who shall be adjudged to pay the costs shall pay a tax of three dollars; but this tax shall not be charged unless a jury shall be impaneled. Said tax fees shall be charged by the clerks in the bill of costs, and collected by the sheriff, and by him paid into the county treasury. And the fund thus raised in any county shall be set apart for the payment of the jurors attending the courts thereof. In Pitt County the jury tax shall be five dollars in civil and in criminal cases.—Rev., 1253.

1931. Criminal, not demandable in advance.—In all cases of criminal complaints before justices of the supreme court, judges of the superior and criminal courts, justices of the peace and other magistrates having jurisdiction of such complaints, the officers entitled by law to receive fees for issuing or executing process shall not be entitled to demand them in advance. Such officers shall indorse the amounts of their respective fees on every process issued or executed by them, and return the same to the court to which it is returnable.—Rev., 1254.

1932. Clerk to insert, in entry of judgment.—The clerk shall insert in the entry of judgment the allowance for costs allowed by law, and the necessary disbursements, including the fees of officers and witnesses, and the reasonable compensation of referees and commissioners in taking depositions. The disbursements shall be stated in detail. Whenever it shall be necessary to adjust costs in any interlocutory proceedings, or in any special proceedings, the same shall be adjusted by the clerk of the court to which the proceedings were returned, except in those matters in which the allowance is required to be made by the judge.—Rev., 1255.

1933. Bills of criminal costs itemized; approved by solicitor.—It shall be the duty of the clerks of the several courts of record, at each term of the court, to make up an itemized statement of the bill of costs in every criminal action tried or otherwise disposed of at said term, which shall be signed by the clerk, and approved by the solicitor.—Rev., 1256.

1934. Justices required to itemize bills of.—In all trials before justices of the peace it shall be lawful for plaintiff or defendant before

payment of costs, to demand of the justice before whom a trial is held an itemized statement of costs; and it shall be his duty to insert in the entry of judgment in very criminal action tried or otherwise disposed of by him a detailed statement of the different items of costs, and to whom due.—Rev., 1257.

1935. Bills of, open to the public.—Every bill of costs shall at all times be open to the inspection of any person interested therein.—Rev., 1258.

2. State Liable, When.

1936. Civil actions by the state.—In all civil actions prosecuted in the name of the state, by an officer duly authorized for that purpose, the state shall be liable for costs in the same cases and to the same extent as private parties. If a private person be joined with the state as plaintiff, he shall be liable in the first instance for the defendant's costs, which shall not be recovered of the state till after execution issued therefor against such private party and returned unsatisfied.—Rev., 1259.

1937. Civil actions by and against state officers.—In all civil actions depending, or which may be instituted, by any of the officers of the state, or which have been, or shall be instituted against them, when any such action is brought or defended pursuant to the advice of the attorney-general, and the same shall be decided against such officers, the costs thereof shall be paid by the state treasurer upon the warrant of the auditor for the amount thereof as taxed.—Rev., 1260.

1938. Civil actions by state for individuals.—In an action prosecuted in the name of the state for the recovery of money or property, or to establish a right or claim for the benefit of any county, city, town, village, corporation or person, costs awarded against the plaintiff shall be a charge against the party for whose benefit the action was prosecuted, and not against the state.—Rev., 1261.

1939. In bribery prosecutions.—The expenses which shall be incurred by any county in investigating and prosecuting any charge of bribery or attempt to bribe any state officer or member of the general assembly within said county, and of receiving bribes by any state officer or member of the general assembly in said county, shall be a charge against the state, and the properly attested claim of the county commissioners shall be paid by the treasurer of the state.—Rev., 1262.

1940. On appeal by state to supreme court of United States.—In all cases, whether civil or criminal, to which the state of North Carolina is a party, and which may be carried from the courts of this state, or from the circuit court of the United States, by appeal or writ of error, to the United States circuit court of appeals, or to the supreme court of the United States, and the state shall be adjudged to pay the costs, it shall be the duty of the attorney-general to certify the amount of such costs to the auditor, who shall thereupon issue a warrant for the same, directed to the treasurer, who shall pay the same out of any moneys in the treasury not otherwise appropriated.—Rev., 1263.

3. Civil Actions and Proceedings.

1941. When allowed plaintiff; when limited by amount of recovery.—Costs shall be allowed of course to the plaintiff, upon a recovery, in the following cases:

(1) In an action for the recovery of real property, or when a claim of title to real property arises on the pleadings, or is certified by the court to have come in question at the trial.

(2) In an action to recover the possession of personal property.

(3) In actions of which a court of a justice of the peace has no jurisdiction unless otherwise provided by law.

(4) In an action for assault, battery, false imprisonment, libel, slander, malicious prosecution, criminal conversation or seduction, if the plaintiff recovers less than fifty dollars damages, he shall recover no more costs than damages.

(5) When several actions shall be brought on one bond, recognizance, promissory note, bill of exchange or instrument in writing, or in any other case, for the same cause of action against several parties who might have been joined as defendants in the same action, no costs other than disbursements shall be allowed to the plaintiff in more than one of such actions, which shall be at his election, provided the party or parties proceeded against in such other action or actions shall have been within the state and not secreted at the commencement of the previous action or actions.—Rev., 1264.

1942. When allowed pauper plaintiff.—Whenever any person shall sue as a pauper, no officer shall require of him any fee, and he shall recover no costs, except in case of recovery by him.—Rev., 1265.

1943. When allowed defendant.—Costs shall be allowed as of course to the defendant, in the actions mentioned in section one thousand two hundred and sixty-four, unless the plaintiff be entitled to costs therein. In all actions where there are several defendants not united in interest, and making separate defenses by separate answers, and the plaintiff fails to recover judgment against all, the court may award costs to such of the defendants as have judgment in their favor or any of them.—Rev., 1266.

1944. Discretionary in other actions.—In other actions, costs may be allowed or not, in the discretion of the court, unless otherwise provided by law.—Rev., 1267.

1945. When in discretion of the court.—Costs in the following matters shall be taxed against either party, or apportioned among the parties, in the discretion of the court:

(1) Application for year's support, for widow or children.

(2) Caveats to wills.

(3) Habeas corpus; and the court shall direct what officer shall tax the costs thereof.

(4) In actions for divorce or alimony; and the court may both before and after judgment make such order respecting the payment of such costs as may be incurred by the wife, either by the husband or by her from her separate estate as may be just.

(5) Application for the establishment, alteration or discontinuance of a public road, cartway or ferry. The board of road supervisors or board of county commissioners may order the costs incurred before them paid in their discretion.

(6) The compensation of referees and commissioners to take depo—

(7) All costs and expenses incurred in special proceedings for the division or sale of either real estate or personal property under the chapter entitled Partition.

(8) In all proceedings under the chapter entitled Draining Lowlands, except as therein otherwise provided.

(9) In proceedings under section six hundred and ninety-one.—Rev., 1268.

Note.—See ss. 54, 58, 339, 407 of the Revisal.

1946. Petitioner pays, when.—The petitioner shall pay the costs in the following proceedings:

(1) In petitions for draining or damming lowlands.

(2) In petitions for condemnation of water-mill sites when the petitioner is allowed to erect the mill; but when he is not allowed to erect the mill, the costs shall be paid by the person who is allowed to do so.

(3) In petitions for condemnation of land for railroads, street railways, telegraph, telephone or electric power or light companies, or

for water supplies for public institutions, or for the use of other quasi-public or municipal corporations; unless in the opinion of the superior court the defendant improperly refused the privilege, use or easement demanded, in which case the costs must be adjudged as to the court may appear equitable and just.

(4) When the petition is refused.—Rev., 1269.

1947. Defendant pays, unreasonably defending action after notice, no personal claim.—In case of a defendant, against whom no personal claim is made, the plaintiff may deliver to such defendant with the summons, a notice subscribed by the plaintiff or his attorney, setting forth the general object of the action, a brief description of the property affected by it, if it affects real or personal property, and that no personal claim is made against such defendant. If a defendant on whom such notice is served unreasonably defends the action, he shall pay costs to the plaintiff.—Rev., 1270.

1948. None allowed to party suing on usurious contract.—No costs shall be recovered by any party, whether plaintiff or defendant, who may endeavor to recover upon any usurious contract.—Rev., 1271.

Note.—See ss. 1950, 1951 of the Revisal.

1949. In special proceedings.—The costs in special proceedings shall be as allowed in civil actions, unless otherwise specially provided.—Rev., 1272.

1950. Allowed in supplemental proceedings.—The court or judge may allow to the judgment creditor, or to any party examined in proceedings supplemental to execution, whether a party to the action or not, witnesses' fees and disbursements.—Rev., 1273.

1951. Laying off homestead and exemptions.—The costs and expenses of appraising and laying off the homestead or personal property exemptions, when the same is made under execution, shall be charged and included in the officer's bill of fees upon such execution or other final process; and when made upon the petition of the owner, they shall be paid by such owner, and the latter costs shall be a lien on said homestead.—Rev., 1274.

1952. On re-assessment of homestead.—If the superior court at term shall confirm the appraisal or assessment, or shall increase the exemption allowed the debtor or claimant, the levy shall stand only upon the excess remaining, and the creditor shall pay all the costs of the proceeding in court. If the amount allowed the debtor or claimant shall be reduced, the costs of the proceeding in court shall be paid by the debtor or claimant, and the levy shall cover the excess then remaining.—Rev., 1275.

1953. Against infant plaintiff, guardian responsible.—When costs are adjudged against an infant plaintiff, the guardian by whom he appeared in the action shall be responsible therefor.—Rev., 1276.

1954. Actions by or against executors, trustees or persons authorized by statute.—In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or a person expressly authorized by statute, costs shall be recovered as in an action by and against a person prosecuting or defending in his own right; but such costs shall be chargeable only upon or collected out of the estate, fund or party represented, unless the court shall direct the same to be paid by the plaintiff or defendant, personally, for mismanagement or bad faith in such action or defense. And whenever any claim against a deceased person shall be referred, the prevailing party shall be entitled to recover the fees of referee and witnesses, and other necessary disbursements, to be taxed according to law.—Rev., 1277.

Note.—See ss. 92, 97, 1799 of the Revisal.

1955. Assignee after action brought, liable for.—In actions in which the cause of action shall become by assignment after the commencement of the action, or in any other manner, the property of a person not a party to the action, such person shall be liable for the costs in the same manner as if he were a party.—Rev., 1278.

4. On Appeals.

1956. Generally.—On an appeal from a justice of the peace to a superior court, or from a superior court or a judge thereof, to the supreme court, if the appellant shall recover judgment in the appellate court, he shall recover the costs of the appellate court and those he ought to have recovered below, had the judgment of that court been correct, and also restitution of any costs of the court appealed from which he shall have paid under the erroneous judgment of such court. If in any court of appeal there shall be judgment for a new trial, or for a new jury, or if the judgment appealed from be not wholly reversed, but partly affirmed and partly disaffirmed, the costs shall be in the discretion of the appellate court.—Rev., 1279.

1957. Of transcript on appeal taxed in supreme court.—Whenever an appeal is taken from the superior court to the supreme court the clerk of the superior court, when he sends up the transcript, shall send therewith an itemized statement of the costs of making up the transcript on appeal, and the costs thereof shall be taxed as a part of the costs of the supreme court.—Rev., 1280.

1958. From justices of the peace.—After an appeal from the judgment of a justice of the peace shall be filed with a clerk of a superior court, the costs in all subsequent stages shall be as herein provided for actions originally brought to the superior court.—Rev., 1281.

1959. Not allowed plaintiff unless his recovery is greater than before justice.—If on appeal from a justice of the peace judgment be entered for the plaintiff, and he shall not recover on his appeal a greater sum than was recovered before the justice, besides interest accrued since the rendition of the judgment, he shall not recover the costs of the appeal, but shall be liable at the discretion of the court to pay the same.—Rev., 1282.

5. Liability of Counties in Criminal Actions.

1960. County pays, when.—If there be no prosecutor in a criminal action, and the defendant shall be acquitted, or convicted and unable to pay the costs, or serves out a sentence on the public roads of New Hanover County, or a nolle prosequi be entered, or judgment arrested, the county shall pay the clerks, sheriffs, constables, justices and witnesses one-half their lawful fees only; except in capital felonies and in prosecutions for forgery, perjury and conspiracy, when they shall receive full fees. And in the following counties the county shall pay one-half their lawful fees, when "not a true bill" is found: Bertie, Brunswick, Caswell, Catawba, Chatham, Clay, Craven, Davie, Duplin, Gaston, Granville, Greene, Henderson, Iredell, Jackson, Johnston, Jones, Lenoir, Lincoln, Ashe, Madison, McDowell, Mecklenburg, Montgomery, Northampton, Onslow, Orange, Pamlico, Pender, Pitt, Richmond, Rowan, Rutherford, Sampson, Stanly, Stokes, Surry, Swain, Transylvania, Wake, Wilkes, Robeson, Yadkin, Watauga, Caldwell, Yancey, Alexander, and Alleghany. And no county shall pay any such costs, unless the same shall have been approved, audited and adjudged against the county as provided in this chapter. All witnesses subpoenaed by order of court to appear before the grand jury in Martin County, and who do attend, and all other witnesses who may testify in open court on the part of the state, shall be allowed to prove attendance and collect one-half fees. In the counties of Brunswick and

Catawba the county shall not be liable for any part of the costs of justices of the peace.—Rev., 1283; Laws 1907, cc. 208, 94, 162, 627.

1961. County liable in supreme court, when.—If on appeal to the supreme court in criminal actions the defendant is successful, the county from which the appeal was taken shall pay one-half the costs of the appeal, and all such sums as have been properly expended by the defendant for the transcript of the record and printing done under the rules of the court.—Rev., 1284.

1962. County where offense committed to pay costs; if not paid, prisoner returned.—In all cases where the county is liable to pay costs, that county wherein the offense is alleged to have been committed shall be adjudged to pay them. The costs taxed in any case removed from another county for trial shall include the fees and expenses allowed for summoning the special venire, if one is ordered in the case, and the per diem and mileage of jurors who are empaneled to try the case, together with all other costs and expenses of the trial of the case, the amount of which, if not provided for by law, to be fixed by the presiding judge, so as to fully relieve the county in which the trial is had of all costs and expenses thereof. All fines, forfeitures, penalties and amercements imposed or levied in the case shall belong to the county from which the case was removed and be paid to the treasurer of said county. When a prisoner is sent from one county to another to be held for trial, or for any other cause or purpose, the county from which he is sent shall pay his prison expenses, unless the same shall be collected from him on or before the first Monday in each month, and upon a failure to do so, it shall be the duty of the county to which he is sent to pay the same to the sheriff or jailer entitled to receive it at the same rate and under the same regulations as its own prison expenses are paid; and the county liable shall repay the same within thirty days after demand, and upon failing to do so the county to which the money is due shall be entitled to recover in the superior court, or, if the amount be within its jurisdiction, the court of justices of the peace of its own county, the amount due, with ten per cent additional, together with eight per cent interest on the sum due; and said courts of said county shall have full jurisdiction to hear, try and determine all actions and proceedings that may be brought for the purpose of enforcing the collection of the same: Provided, that when the county to which such prisoner has been sent has paid the prison expenses and has made demand therefor upon the county liable as above, provided such demand be not complied with within ten days, the sheriff or jailer shall at once return such prisoner to the county from which such prisoner was sent, and deliver him to the sheriff or jailer thereof.—Rev., 1285.

1963. Statement of, chargeable to county, filed with commissioners.—In all criminal actions where the county is liable in whole or in part for costs, it shall be the duty of the clerks of the courts to make out a statement of such costs from the record or docket, within thirty days after the hearing, trial, determination, or other disposition thereof, and file the same with the board of commissioners of the county.—Rev., 1286.

1964. Expense incurred in going after prisoner, how paid.—When a sheriff or other officer shall arrest a person under a *capias* or other legal process, which requires him to have the person arrested before a court or judge of another county, and such sheriff or other officer shall be obliged to incur expense in the safe delivery of such person by reason of his failing to give bond for his appearance, or if the sheriff or other officer of the county to which the prisoner is to be carried shall incur any expense in going for and conveying said prisoner to his county, then in either case, the sheriff or other officer shall file

with the court or judge issuing the *capias* or other legal process and with the register of deeds an itemized and sworn account of such expenses, which shall be presented by the register to the board of commissioners at their next regular meeting to be audited by them. Such sworn statement shall be received by the said board as *prima facie* correct. Upon such auditing the board of commissioners shall cause to be issued to such sheriff or other officer an order on the county treasurer for the amount so audited and allowed by them, and shall notify the court or judge of their action, to the end that the amount so allowed shall be taxed in the costs to the use of the county.—Rev., 1287.

1965. Lynchings, costs of investigation.—In all cases of investigation and trial of the crime of lynching, the entire cost incurred in the prosecution, unless paid by the person or persons convicted, shall be paid by the county wherein the crime shall have been committed. And whenever any solicitor goes to a county to investigate a crime of breaking or entering a jail for the purpose of lynching, the county where such crime is committed shall pay the solicitor the sum of one hundred dollars for making the investigation.—Rev., 1288.

1966. When county pays state's witnesses.—Witnesses summoned or recognized on behalf of the state to attend on any criminal prosecution in the superior or criminal courts where the defendant is insolvent, or by law shall not be bound to pay the same, and the court does not order them to be paid by the prosecutor, shall be paid by the county in which the prosecution was commenced. And in all cases wherein witnesses may be summoned or recognized to attend any such court to give evidence in behalf of the state, and the defendant shall be discharged, and in cases where the defendant shall break jail and shall not afterwards be retaken, the court shall order the witnesses to be paid.—Rev., 1289.

1967. When county pays defendant's witnesses.—When the defendant shall be acquitted, a *nolle prosequi* entered, or judgment against him arrested, and it shall be made to appear to the court by certificate of counsel or otherwise, that said defendant had witnesses, duly subpoenaed, bound or recognized, in attendance, and that they were necessary for his defense, it shall be the duty of the court, unless the prosecutor be adjudged to pay the costs, to make and file an order in the cause directing that said witness be paid by the county in such manner and to such extent as is authorized by law for the payment of state's witnesses in like cases.—Rev., 1290.

6. Liability of Defendant in Criminal Actions.

1968. When defendant pays.—Every person convicted of an offense, or confessing himself guilty, or submitting to the court, shall pay the costs of prosecution.—Rev., 1291.

1969. Defendant imprisoned, detained until cost paid.—If the sentence be that the guilty person be imprisoned for a time certain, and that he pay the costs, there shall be added to it that he shall remain in prison after the expiration of the fixed time for his imprisonment until the costs shall be paid, or until he shall otherwise be discharged according to law.—Rev., 1292.

1970. Confession of judgments to secure fine and cost.—In cases where a court, mayor or a justice of the peace permits a defendant convicted of any criminal offense, to give bond or confess judgment, with sureties to secure the fine and costs which may be imposed, the acceptance of such security shall be upon the condition that it shall not operate as a discharge of the original judgment against the defendant nor as a discharge of his person from the custody of the law until the fine and costs are paid.—Rev., 1293.

1971. Defendant failing to pay, may be arrested.—In default of payment of such fine and costs, it shall be the duty of the court at any subsequent term thereof on motion of the solicitor of the state to order a *capias* to issue to the end that such defendant may be again arrested and held for the fine and costs until discharged according to law; and a justice of the peace or mayor may at any subsequent time arrest the defendant and hold him for the fine and costs until discharged according to law.—Rev., 1294.

7. The Prosecutor.

1972. Who is prosecutor; when pays costs.—In all criminal actions, if the defendant be acquitted, *nolle prosequi* entered, judgment against him arrested, or if the defendant shall be discharged from arrest for want of probable cause, the costs, including the fees of all witnesses summoned for the accused, whom the judge, court or justice of the peace before whom the trial took place shall certify to have been proper for the defense, shall be paid by the prosecutor, whether marked on the bill or warrant or not, whenever the judge, court or justice shall be of opinion that there was not reasonable ground for the prosecution, or that it was not required by the public interest. And every judge, court or justice is hereby fully authorized to determine who the prosecutor is at any stage of a criminal proceeding, whether before or after the bill of indictment shall have been found, or the defendant acquitted: Provided, that no person shall be made a prosecutor after the finding of the bill, unless he shall have been notified to show cause why he should not be made the prosecutor of record.—Rev., 1295.

1973. Pay of witnesses in criminal cases.—All witnesses summoned or recognized in behalf of the state shall be allowed the same pay for their daily attendance, ferriage and mileage as is allowed to witnesses attending in civil suits; and such fees for attendance shall be paid by the defendant, only upon conviction, confession or submission; and if the defendant be acquitted on any charge of an inferior nature, or a *nolle prosequi* be entered thereto, the court shall order the prosecutor to pay the costs, if such prosecution shall appear to have been frivolous or malicious; but if the court shall be of opinion that such prosecution was neither frivolous nor malicious, and a greater number of witnesses have been summoned than were, in the opinion of the court, necessary to support the charge, the court may, nevertheless, order the prosecutor to pay the attendance of such unnecessary witnesses, if it appear that they were summoned at his special request.—Rev., 1296.

1974. When imprisoned for.—Every such prosecutor may be adjudged not only to pay the costs, but he shall also be imprisoned for the nonpayment thereof, when the judge, court, or justice of the peace before whom the case was tried shall adjudge that the prosecution was frivolous or malicious.—Rev., 1297.

8. Witnesses.

1975. Not entitled to, in advance.—Witnesses are not entitled to receive their fees in advance; but no witness in a civil action or special proceeding, unless summoned on behalf of the state or a municipal corporation, shall be compelled to attend more than one day, if the party by or for whom he was summoned, shall, after one day's attendance, on request and presentation of a certificate, fail or refuse to pay what then may be due, for traveling to the place of examination, and for the number of days of attendance.—Rev., 1298.

1976. Must prove attendance; may recover therefor.—Every person summoned, who shall attend as a witness in any suit, shall, before the clerk of the court, or before the referee or officer taking the testimony, ascertain by his own oath or affirmation the sum due for travel-

ing to and from court, attendance and ferriage, which shall be certified by the clerk; and on failure of the party, at whose instance such witness was summoned (witnesses for the state and municipal corporations excepted), to pay the same previous to the departure of the witness from court, such witness may at any time sue for and recover the same from the party summoning him; and the certificate of the clerk shall be sufficient evidence of the debt. Where recovery may be had before a justice of the peace on a witness ticket, the justice shall deface it by writing the word judgment, and deliver the same to the person of whom it is recovered.—Rev., 1299.

1977. Tickets filed with clerk; only two to prove same fact.—At the court where the cause shall be finally determined the party recovering judgment shall file in the clerk's office the witness tickets; the amount whereof shall be taxed in the bill of costs, to be levied and recovered for the benefit of said party. The party cast shall not be obliged to pay for more than two witnesses to prove a single fact.—Rev., 1300.

1978. Pay of, before jury of view or commissioner.—Witnesses summoned to appear at any survey, or before any jury of view, or before any commissioner, arbitrator, referee, or other person authorized to require their attendance, shall be entitled to the same fees as for similar attendance at the court of the county, and may prove, by their own oath, their attendance, mileage, and ferriage before such person, who is hereby authorized to administer the oath; and when they shall attend on any commission issuing from without the state, they may recover the fees for attendance against the party summoning them, or his agent or attorney directing them to be summoned; and when they shall attend under a commission or authority from any court in this state, the fees for attendance shall be proved as aforesaid, and be certified to the proper court and taxed among the costs of the cause, as if the witness had attended the court; but nevertheless, such fees may be immediately recovered against the party summoning.—Rev., 1301.

1979. When witness before grand jury.—No witness shall receive pay for attendance in a criminal case before a grand jury unless such witness shall have been summoned by direction in writing of the foreman of the grand jury, or of the solicitor prosecuting, addressed to the clerk of the court, commanding him to summon such witness, stating the name of the parties against whom his testimony may be needed, or shall have been bound or recognized by some justice of the peace to appear before the grand jury.—Rev., 1302.

1980. State's paid, when; only two paid; one attendance, one day.—No person shall receive pay as a witness for the state on the trial of any criminal action unless such person shall have been summoned by the clerk under the direction of the solicitor prosecuting in the court in which the action originated, or in which it shall be tried if removed; and no solicitor shall direct that more than two witnesses shall be summoned for the state in any prosecution for a misdemeanor, nor shall any county or defendant in any such prosecution be liable for or taxed with the fees of more than two witnesses, unless the court, upon satisfactory reasons appearing, shall otherwise direct. And no witness summoned in a criminal action or proceeding shall be paid by the county for attendance in more than one case for any one day; nor shall the county be required to pay any such witness if his attendance shall be taxed in more than one case on the same day.—Rev., 1303.

1981. Only two bound over on appeal in criminal action.—When the defendant shall appeal from the judgment of the justice of the peace, in any criminal action, it shall be the duty of such justice of the peace to select and bind over on behalf of the state not more than two witnesses, and neither the county nor the defendant shall be liable for the fees of more than two witnesses on such appeal, unless additional witnesses

shall be summoned by order of the appellate court as provided in the preceding section.—Rev., 1304.

1982. How discharged; certificate of attendance filed.—It shall be the duty of all solicitors prosecuting in the several courts, as each criminal prosecution shall be disposed of by trial, removal, continuance or otherwise, to call and discharge the witnesses for the state, either finally or otherwise, as the disposition of the case may require; and he shall thereupon file with the clerk of the court a certificate giving the names of the witnesses entitled to prove their attendance, with the date of their discharge. The said certificate shall be in the following or similar form, and blanks thereof shall be furnished to the solicitor by the clerk at the county expense, viz:

North Carolina, County.

..... Court, Term, 19...

State v.

Witness

discharged day of, 19... .., Solicitor.

—Rev., 1305.

1983. Not paid unless certified; discretion of judge.—No county, prosecutor or defendant shall be liable to pay any witness, nor shall his fees be embraced in the bill of costs to be made up as hereinbefore provided, unless his name be certified to the clerk by the solicitor, or included in the order of the court. And the judge or justice may, in his discretion, for satisfactory cause appearing, direct that the witnesses, or any of them, shall receive no pay, or only a portion of the compensation authorized by law: Provided, that the court, at any time within one year after judgment, may order that any witness may be paid, who for any good reason satisfactory to the court failed to have his fees included in the original bill of costs.—Rev., 1306.

9. Criminal Costs Before Justices.

1984. Who pays in justice's court.—The party convicted in a criminal action, or proceeding before a justice, shall always be adjudged to pay the costs; and if the party charged be acquitted, the complainant shall be adjudged to pay the costs, and may be imprisoned for the non-payment thereof, if the justice shall adjudge that the prosecution was frivolous or malicious. But in no action or proceeding of which he has final jurisdiction, commenced or tried in a court of a justice of the peace, shall the county be liable to pay any costs.—Rev., 1307.

1985. Defendant imprisoned for.—If the justice shall sentence the party found by him to be guilty to pay a fine and costs, and the same shall not be immediately paid, the justice shall commit the guilty person to the county jail until the same shall be paid, or until he shall be otherwise discharged according to law.—Rev., 1308.

CHAPTER XX.

COUNTY COMMISSIONERS.

1986. Body politic; powers exercised by commissioners.—Every county is a body politic and corporate, and shall have the powers prescribed by statute, and those necessarily implied by law, and no others; which powers can only be exercised by the board of commissioners, or in pursuance of a resolution adopted by them.—Rev., 1309.

1987. Corporate powers.—A county is authorized—

- (1) To sue and be sued in the name of the county.
- (2) To purchase and hold lands within its limits and for the use of its inhabitants, subject to the supervision of the general assembly.
- (3) To make such contracts, and to purchase and hold such personal property, as may be necessary to the exercise of its powers.
- (4) To make such orders for the disposition or use of its property as the interest of its inhabitants require.—Rev., 1310.

Note.—For power to purchase land at public sales, see s. 2916 of the Revisal.

Note.—For service of process, see s. 440 of the Revisal.

2. Election of.

1988. By qualified voters; number.—There shall be elected in each county of the state, except those mentioned in section one thousand three hundred and twelve, at the general election to be held in the year one thousand eight hundred and ninety-six, and every two years thereafter, by the duly qualified electors thereof, three persons to be chosen from the body of the county, who shall be styled "the board of commissioners for the county of," and shall hold their office for two years from the date of their qualification and until their successors shall be elected and qualified: Provided, the number of commissioners shall be five instead of three in the counties of Alamance, Bertie, Buncombe, Cabarrus, Carteret, Catawba, Chowan, Columbus, Craven, Cumberland, Durham, Edgecombe, Franklin, Granville, Guilford, Halifax, Hertford, Johnston, Lenoir, Lincoln, Mecklenburg, New Hanover, Northampton, Pasquotank, Perquimans, Richmond, Robeson, Rockingham, Rowan, Wake, Warren and Wayne; and in the county of Beaufort seven. In the county of Gaston six, one of whom must be a resident of Dallas township, one a resident of Gastonia township, one a resident of River Bend township, one a resident of South Point township, one a resident of Crowder's Mountain township, and one a resident of Cherryville township. If at any time said board of commissioners for the county of Gaston shall be equally divided upon any question pending before them and there shall be a tie vote, then and in that event the clerk of said board is authorized and empowered to cast the deciding vote and to determine such question.—Rev., 1311; Laws 1907, c. 350.

1989. By justices of the peace.—The justices of the peace for Vance County, on the first Monday in June, one thousand eight hundred and eighty-four (and for Montgomery County on the first Monday in June, one thousand nine hundred and five) and on the first Monday in June every two years thereafter, shall assemble at the court-house of their respective counties, and a majority being present, shall proceed to the election of not less than three nor more than five persons, to be chosen from the body of the county, excluding the justices themselves, who shall be styled "the board of commissioners for the county of," and shall hold their offices for two years from the date of their qualification, and until their successors shall be elected and qualified.—Rev., 1312.

1990. Meetings of justices of the peace in certain counties.—For the proper discharge of their duties, the justices of the peace shall meet annually with the board of commissioners on the first Monday in June, unless they shall be oftener convened by the board of commissioners, which is empowered to call together the justices of the peace not oftener than once in three months. For attending such meetings, the justices of the peace shall receive no compensation; but they shall keep a record of their meetings. The register of deeds shall be ex officio the clerk of the justices of the peace, and he shall receive such compensation for his services as the board of commissioners shall provide. This section shall apply only to the county of Vance.—Rev., 1313.

1991. Vacancies in board; how filled.—In case of a vacancy occurring in the board of commissioners of a county, the clerk of the superior court for the county shall appoint to said office for the unexpired term, except in the county named in section one thousand three hundred and fifteen.—Rev., 1314.

1992. Vacancies in board, how filled in certain counties.—In case of a vacancy occurring in the board of commissioners of a county the justices of the peace for the county shall appoint to said office for the unexpired term. This section shall apply only to the county of Vance.—Rev., 1315.

1993. When board to qualify; oath to be filed.—The board of commissioners shall qualify and enter upon the duties of their office on the first Monday of December next succeeding their election, and they may take the oaths of office before the clerk of the superior court, or some judge, or justice of the peace or other person qualified by law to administer oaths. The oaths of office severally taken and subscribed by them shall be deposited with the clerk of the superior court.—Rev., 1316.

3. Meetings.

1994. Meetings of the board.—The board of commissioners in each county shall hold a regular meeting at the court-house, on the first Mondays in December and June. Special meetings may be held on the first Monday in every month, but shall not continue longer in session than two days. Meetings may be held at other times for the more convenient dispatch of business at the call of the chairman, on the written request of one member of the board, but public notice of the time and place of all such called meetings shall be posted at the courthouse door for not less than six days, and published one time in a county newspaper, if there is one. The board shall receive no compensation for attending such called meetings. The board may adjourn its regular meetings in December and June from day to day until the business before it is disposed of. Every meeting shall be open to all persons. A majority of the board shall constitute a quorum. At each regular December meeting the boards shall choose one of its members as chairman for the ensuing year; in his absence the members present shall choose a temporary chairman.—Rev., 1317.

Note.—Meetings in certain counties are governed by special laws as follows: Mecklenburg, 1893, c. 199; Clay, 1889, c. 184; Forsyth, 1897, c. 437; Wake, 1899, c. 297; Durham, 1901, c. 309; Edgecombe, 1901, c. 429; Gaston, 1903, c. 34.

4. Powers and Duties.

1995. Powers given board.—The board of commissioners of the several counties shall have power—

1. To Exempt from Capitation Tax.

To exempt from capitation tax in special cases, on account of poverty and infirmity.

2. To Provide for the Payment of Debt.

To provide by taxation or otherwise, for the prompt and regular payment, with interest, of any existing debt owing by any county.

3. To Submit Propositions to Contract Debt to a Vote of Electors.

To submit to a vote of the qualified electors in the county, after having obtained the approval of the general assembly, any proposition to contract a debt, or loan the credit of the county, under section seven, article seven, of the constitution; to order the time for voting upon such proposition, which shall be upon public notice thereof at one or more places in each township in the county, and publication in one or more county newspapers, if there be any, for three months next immediately preceding the time fixed on; and such election shall take place and be conducted under the laws as prescribed for the election of

members of the general assembly; and the commissioners shall provide for giving effect, in case of the adoption of the proposition, to the expressed will of a majority of the qualified voters in such election.

4. To Make Orders Respecting Corporate Property.

To make such orders respecting the corporate property of the county as may be deemed expedient.

5. To Audit Accounts.

To audit accounts against the county, and direct the raising of the moneys necessary to defray them.

6. To Purchase Property for any Public Building, and at Execution Sale.

To purchase real property necessary for any public county building, and for the support of the poor; and to determine the site thereof, where it has not been already located; and to purchase land at any execution sale, when it shall be deemed expedient to do so, to secure a debt due the county. The deed shall be made to the county, and the board may, in its discretion, sell any lands so purchased.

7. To Divide County into Townships.

To divide each county into convenient districts, called townships, and to determine the boundaries and prescribe the names of said townships. A map and survey of said townships shall be filed in the office of the clerk of the board of commissioners, and also in the office of the secretary of state.

8. To Order the Laying Out, Alteration or Discontinuing of Highways.

To exercise authority in laying out, altering, repairing and discontinuing highways; in establishing and settling ferries; in building and keeping up bridges; in laying off or discontinuing cartways; in providing draws in all bridges, where the same may be necessary for the convenient passage of vessels; in appointing overseers of highways; in excusing persons from working on the highways; in allowing and contracting for the building of toll-bridges, and taking bond from the builders thereof; and in licensing the erection of gates across highways. This authority shall be exercised under the rules, regulations, restrictions and penalties in all respects prescribed and imposed in the chapter entitled Roads, Ferries and Bridges.

9. To Raise Highway Moneys.

To raise by tax the necessary highway moneys, in such manner as may be prescribed by law.

10. To Appoint an Inspector of Highways and Bridges.

To appoint an inspector of highways and bridges for the county, if deemed necessary; to fix and provide for his compensation and regulate his duties, not inconsistent with the laws of the state. The commissioners of two or more counties may unite in employing an inspector of highways and bridges, and apportioning his compensation between the respective counties as may be agreed upon.

Counties are quasi corporations and are not responsible for damages received through defective bridges and highways, unless specially made so by statute.—White v. Commissioners of Chowan, 90—437.

To provide for the employment on the highway or public works in the county of all persons condemned to imprisonment with hard labor, and not sent to the penitentiary.

12. To Appoint Proxies to Represent County.

To appoint proxies, to represent in any annual or other meeting, the shares or interest held by any county in a railroad company, or other corporation, under the charter of such corporation, or under any special acts of the general assembly, authorizing county subscriptions in such cases.

13. To Sell or Lease Real Property.

To sell or lease any real property of the county and to make deeds or leases for the same to any purchaser or lessee.

14. To Provide for the Maintenance of the Poor.

To provide by tax for the maintenance, comfort and well-ordering of the poor; to employ, biennially, by public letting or otherwise, some competent person as overseer of the poor, to institute proceedings by the warrant of the chairman against any person coming into the county who is likely to become chargeable thereto, and cause the removal of such poor person to the county where he was last legally settled; and to recover by action in the superior court from the said county, all charges and expenses whatever, incurred for the maintenance or removal of such poor person.

15. To Establish Public Hospitals.

To establish public hospitals for the county in cases of necessity, and to make rules, regulations and by-laws for preventing the spread of contagious and infectious diseases, and for taking care of those afflicted thereby, the same not being inconsistent with the laws of the state; and to raise by taxation the necessary moneys to defray the charges and expenses so incurred.

16. To Procure Weights and Measures.

To procure for each county sealed weights and measures, according to the standard prescribed by the congress of the United States; and to elect a standard keeper, who shall qualify before the board and give bond approved by the board as prescribed by law.

17. To Appoint Commissioners to Open Rivers and Creeks.

To appoint a commissioner to open and clear the rivers and creeks within the county, or where such river or creek forms a county line or a part thereof. For this purpose the board is authorized to withdraw from the public roads such hands as may be deemed necessary, and allot them to such work under overseers and the direction of the commissioner. The board may impose the duties of this subdivision on the inspector of highways and bridges when appointed; and shall in all respects conduct the opening and clearing of such rivers and creeks as prescribed by law.

18. To License Peddlers and Retailers of Spirituous Liquors.

To license peddlers and retailers of spirituous and other liquors as prescribed by law. No license shall be good for more than one year, nor granted to two or more persons to peddle as partners in trade. And the board of commissioners shall grant licenses for the sale of spirituous liquors to all persons possessing the qualifications required by law, except in those localities where the sale of spirituous liquors shall be prohibited by law.

19. To Establish Public Landings, Places of Inspection, and Inspectors.

To establish such public landings and places of inspection as the board of commissioners may think proper; and to appoint such inspectors in any town or city as may be authorized by law.

20. To License Auctioneers.

To license for the term of one year any number of persons to exercise the trade and business of auctioneers in each county, and to take their bonds as prescribed by law.

21. To Require from any County Officer a Report Under Oath.

To require from any county officer or other person employed and paid by the county, a report under oath at any time, on any matters connected with his duties.

22. To Authorize Chairman to Issue Subpoenas.

To authorize the chairman to issue subpoenas to compel the attendance before the board, of any persons, and the production of books and

papers relating to the affairs of the county for the purpose of examination, on any matter within the jurisdiction of the board. The subpoena shall be served by the sheriff or any constable to whom it is delivered; and upon return of personal service thereof, whoever neglects to comply with the subpoena or refuses to answer any proper question, shall be guilty of contempt and punishable therefor by the board. A witness is bound in such case to answer all the questions which he would be bound to answer in like case in a court of justice; but his testimony given before the board shall not be used against the witness on the trial of any criminal prosecution other than for perjury committed on the examination; the chairman of the board of county commissioners for each county is authorized in his official capacity to administer oaths in any matter coming before either of such boards. Any member of such board while temporarily acting as such chairman shall have and exercise like authority.

23. To Approve Bonds of County Officers and Induct Them into Office.

To qualify and induct into office at the meeting of the board, on the first Monday in the month next succeeding their election or appointment, the following named county officers, to-wit: Clerk of the superior court, sheriff, coroner, treasurer, register of deeds, surveyor, and constable; and to take and approve the official bonds of such officers, which the board shall cause to be registered in the office of the register of deeds. The original bonds shall be deposited with the clerk of the superior court, except the bond of the said clerk, which shall be deposited with the register of deeds, for safe-keeping: Provided, however, that if the said board shall declare the official bonds of any of said county officers to be insufficient, or shall decline to receive the same, the said officers may appeal to the superior court judge riding the district in which said county is, or to the resident judge of said district, as he may elect, who shall hear said appeal in chambers, at any place in said district which he shall designate, within ten days after notice by him of the same, and if, upon the hearing of said appeal, the judge shall be of the opinion that the said bond is sufficient, he shall issue an order to the said board of commissioners to induct the said officer into office, or that he shall be retained in office, as the case may be; but if, upon the hearing of said appeal, the judge shall be of the opinion that the bond is insufficient, he shall give the appellant ten days in which to file before him an additional bond, and if the appellant shall within the said ten days file before the said judge a good and sufficient bond, in the opinion of said judge, he shall so declare and issue his order to said board directing and requiring them to induct the appellant into office, or retain him, as the case may be; but if, in the opinion of the said judge, both the original and the additional bonds are insufficient, he shall declare the said office vacant and notify the said commissioners, who shall notify the clerk of the superior court, who shall appoint to fill the vacancy, except in cases of the clerk of the superior court, which vacancy shall be filled by the resident judge. The judgment of the superior court judge shall be final. The appeal and the finding and judgment of the superior court judge shall be recorded on the minutes of the board of commissioners.

24. To Adopt a County Seal.

To adopt a seal for the county, a description and impression whereof shall be filed in the office of superior court clerk and of the secretary of state.

25. To Levy County Taxes.

To levy, in like manner with the state taxes, the necessary taxes for county purposes; but the taxes so levied shall never exceed the double of the state tax, except for a special purpose, and with the special approval of the general assembly. All county taxes shall be levied at the regular meeting of the board on the first Monday in June. The

board may extend the time for the collection and settlement of the county taxes to such time as may be deemed expedient, not beyond the first day of May next after the taxes were levied.

26. To Erect and Repair County Buildings.

To erect and repair the necessary county buildings, and to raise, by taxation, the moneys therefor.

27. To Borrow Money.

To borrow money for the necessary expenses of the county, and to provide for its payment, with interest, in periodical instalments, by taxation.

28. To Designate Site for County Buildings.

To remove or designate a new site for any county building; but the site of any county building already located shall not be changed, unless by an unanimous vote of all the members of the board at the regular December meeting, and unless upon notice of the proposed change, specifying the new site. Such notice shall be published in a newspaper printed in the county, if there is one, and posted in one or more public places in every township in the county for three months, next immediately preceding the annual meeting, at which the final vote on the proposed change is to be taken. Such new site shall not be more than one mile distant from the old, except upon the special approval of the general assembly.

29. To Construct and Repair Bridges.

To construct and repair bridges in the county, and to raise by tax the money necessary therefor, and when a bridge is necessary over a stream, which divides one county from another, the board of commissioners of each county shall join in constructing or repairing such bridge; and the charge thereof shall be defrayed by the counties concerned, in proportion to the number of taxable polls in each.

30. To Erect, Divide or Alter Townships.

To erect, divide, change the names of, or alter townships in the manner following: In any county, any three freeholders of each township to be affected, may, after the notice presently to be mentioned, apply by petition to the board of commissioners, to erect a new township, or divide an existing township, or change the name of or alter the boundaries thereof. Notice of the application shall be posted in one or more public places in each of such townships, and published in a newspaper printed in the county, if there is one, for at least four weeks preceding the meeting at which the application is made to the board. No township shall have or exercise any corporate powers whatsoever, unless authorized by an act of the general assembly, to be exercised under the supervision of the board of commissioners.

31. To Provide for a House of Correction.

To make Provision for the erection in each county of a house of correction, where vagrants and persons guilty of misdemeanors shall be restrained and usefully employed; to regulate the employment of labor therein; to appoint a superintendent thereof, and such assistants as may be deemed necessary, and to fix their compensation.

32. To Regulate Speed of Automobiles.

To regulate the speed of automobiles, motor-cycles and other like vehicles on the public roads and bridges, and make such ordinances as they may deem necessary governing the same. This subsection shall not apply to the counties of Mecklenburg and New Hanover.

33. To Display State Flag.

The board of county commissioners of the several counties of this state shall authorize the procuring of a North Carolina flag, to be displayed either on a staff upon the top, or draped behind the judge's stand, in each and every court-house in the state, and the state flag

shall be displayed at each and every term of court held, and on such other public occasions as the commissioners may deem proper. No state flag shall be allowed in or over any building here mentioned that does not conform to section five thousand three hundred and twenty-one of the Revisal of one thousand nine hundred and five.—Rev., 1318; Laws 1907, c. 838.

1996. Powers in certain counties.—In the counties of Montgomery and Vance, the powers conferred by subsections twenty-five and twenty-eight of the preceding section shall be exercised only with the concurrence of a majority of the justices of the peace, sitting with them; and the powers conferred by subsections thirteen, twenty-six, twenty-seven, thirty and thirty-one of the preceding section shall be exercised only with the concurrence, or assent of a majority of the justices of the peace; and the powers conferred in subsection twenty-nine of the preceding section shall not be exercised without the concurrence of the justices of the peace, where the costs exceed five hundred dollars; and in said counties subsection twenty-three of the preceding section shall not be enforced, but the following shall govern, to-wit: To qualify and induct into office at the meeting of the board on the first Monday in the month next succeeding their election or appointment the following named county officers, to-wit: Clerk of the superior court, sheriff, coroner, treasurer, register of deeds, surveyor and constable; and to take and approve the official bonds of said officers, which the board shall cause to be registered in the office of the register of deeds. The original bonds shall be deposited with the clerk of the superior court, except the bond of the said clerk, which shall be deposited with the register of deeds for safe-keeping.—Rev., 319.

1997. Purchase of county indebtedness.—The board of commissioners may purchase at any price, not exceeding their par value and accumulated interest, any of the outstanding bonds or other indebtedness of the county.—Rev., 1320.

1998. To fill vacancies in certain offices.—Whenever a vacancy shall occur in the office of sheriff, constable, coroner, register of deeds, county treasurer or county surveyor, the board of commissioners of the county shall fill the same by appointment.—Rev., 1321.

1999. To settle disputed county lines.—Whenever there shall be any dispute concerning the dividing line between counties, the board of commissioners of each county interested in the adjustment of said line, a majority of the board consenting thereto, may appoint one or more commissioners, on the part of each county, to settle and fix the line in dispute; and their report, when ratified by a majority of the commissioners in each county, shall be conclusive of the location of the true line, and shall be recorded in the register's office of each county, and in the office of the secretary of state.—Rev., 1322.

2000. Such commissioners, how sworn and paid.—Such commissioners, before entering on the duties assigned them, shall be sworn before a justice of the peace; and they, with all others employed, shall be allowed reasonable pay for their labors.—Rev., 1323.

Note.—County commissioners failing to discharge duty guilty of misdemeanor, see ss. 3573, 3574, 3592 of the Revisal.

County Commissioners liable for taxes, see s. 2814 of the Revisal.

The board of county commissioners being required to take and approve the official bonds of sheriffs, and being liable in damages if they knowingly accept insufficient bonds, the approval or disapproval of such bonds is within their discretion, and the courts can not compel them to approve and receive bonds which they find to be insolvent or insufficient.—Harrington v. King, 117—117.

5. Clerk to Board.

2001. Register of Deeds ex officio; compensation.—The register of deeds shall be ex officio clerk of, and his compensation shall be fixed by, the board of commissioners.—Rev., 1324.

2002. Duties.—It is the clerk's duty—

(1) To record in a book to be provided for the purpose all the proceedings of the board.

(2) To enter every resolution or decision concerning the payment of money.

(3) To record the vote of each commissioner on any question submitted to the board, if required by any member present.

(4) To preserve and file in alphabetical, or other due order, all accounts presented or acted on by the board, and to designate upon every account audited the amount allowed and the charges for which it was allowed.

(5) To keep the books and papers of the board free for the examination of all persons.

(6) To administer oaths to all persons presenting claims against the county, but he shall receive no fee therefor.—Rev., 1325.

2003. To publish annual statement.—The clerk shall annually, on or within five days next before the first Monday of December, make out and certify, and cause to be posted at the court-house, and published in a newspaper printed in the county, if there be one, for at least four weeks, a statement for the preceding year, showing—

(1) The amount, items and nature of all compensation audited by the board to the members thereof severally.

(2) The number of days the board was in session, and the distance traveled by the members respectively in attending the same.

(3) Whether any unverified accounts were audited, and if any, how much and for what.—Rev., 1326.

6. County Poor.

Note.—Failure to publish statement a misdemeanor, see s. 3592 of the Revisal.

For record to be kept of accounts of funds by clerk of superior court, see s. 919 of the Revisal.

For court-house, see s. 1335 of the Revisal.

For limit on county and other municipal indebtedness, see s. 2977 of the Revisal.

2004. County commissioners to provide for support of; superintendent.—The board of commissioners of each county is authorized to provide by taxation for the maintenance, and to do all such matters and things as may be deemed expedient for the comfort and well ordering of the poor; to employ biennially some competent person as superintendent of the county home for the aged and infirm, with power to remove him for cause; to institute proceedings against any person coming into the county who is likely to become chargeable thereto, and to cause the removal of such person to the county where he was last legally settled; and to recover by action from such county, all charges and expenses whatever incurred for the maintenance or removal of such poor person.—Rev., 1327.

2005. County home for aged and infirm.—All persons who may become chargeable to any county shall be maintained at the county home for the aged and infirm, or at such place or places as the board of commissioners may select or agree upon.—Rev., 1328.

2006. How county home supported.—The board of commissioners may provide for the support of the persons admitted by them to the home for the aged and infirm by employing a superintendent at a certain sum, or by paying a specified sum for the support of such persons to any one who will take charge of the county home for the aged and infirm, as said board may deem for the best interest of the county and the cause of humanity.—Rev., 1329.

2007. Indigent persons owning property.—Whenever any indigent person becomes chargeable to a county for maintenance and support in accordance with the provisions of this chapter, owning any estate, it shall be the duty of the board of commissioners of any county liable

to pay the expenses of such indigent person, to cause the same to be sold for its indemnity or reimbursement in the manner provided in the chapter entitled Idiots, Inebriates and Lunatics, or they may take possession thereof and rent the same out and apply the rent toward the support of such indigent person.—Rev., 1330.

2008. Families of militiamen supported by county.—When any citizen of the state is absent on service as a militiaman or member of the state guard, and his family are unable to support themselves during his absence, the board of commissioners of his county, on application, shall make towards their maintenance such allowance as may be deemed reasonable.—Rev., 1331.

2009. Paupers not to be hired out by auction.—No pauper shall be let out at public auction, but the board of commissioners may make such arrangements for the support of paupers with their friends or other persons, when not maintained at the county home for the aged and infirm, as may be deemed best.—Rev., 1332.

2010. Legal settlements, how acquired.—Legal settlements may be acquired in any county, so as to entitle the party to be supported by such county, in the manner following, and not otherwise:

1. By One Year's Residence.

Every person, who shall have resided continuously in any county for one year, shall be deemed legally settled in that county.

2. Married Women to Have Settlement of Their Husbands.

A married woman shall always follow and have the settlement of her husband, if he have any in the state; otherwise, her own at the time of her marriage, if she then had any, shall not be lost or suspended by the marriage, but shall be that of her husband, till another is acquired by him, which shall then be the settlement of both.

3. Legitimate Children to Have Settlement of Father.

Legitimate children shall follow and have the settlement of their father, if he have any in the state, until they gain a settlement of their own; but if he have none, they shall, in like manner, follow and have the settlement of their mother, if she have any.

4. Illegitimate Children, that of Their Mother.

Illegitimate children shall follow and have the settlement of their mother, at the time of their birth, if she then have any in the state. But neither legitimate nor illegitimate children shall gain a settlement by birth in the county in which they may be born, if neither of their parents had any settlement therein.

5. Settlement to Continue Until New One Acquired.

Every legal settlement shall continue till it shall be lost or defeated by acquiring a new one, within or without the state; and upon acquiring such new settlement, all former settlements shall be defeated and lost.—Rev., 1333.

2011. Removal to proper county, at cost of that county; housekeepers entertaining poor.—Upon complaint made by the chairman of the board of county commissioners, before a justice of the peace, that any person has come into the county, who is likely to become chargeable thereto, the justice by his warrant shall cause such poor person to be removed to the county where he was last legally settled; but if such poor person be sick or disabled, and can not be removed without danger of life, the board of commissioners shall provide for his maintenance and cure at the charge of the county; and after his recovery shall cause him to be removed, and pay the charges of his removal; and the county, wherein he was last legally settled, shall repay all charges occasioned by his sickness, maintenance, cure, and removal, and all charges and expenses whatever, if such person shall die before removal. And if the board of commissioners of the county, to which such poor person belongs, shall refuse to receive and provide for him when re-

moved as aforesaid, every commissioner so refusing shall forfeit and pay forty dollars, for the use of the county whence the removal was made; moreover, if the board of commissioners of the county, where such person was legally settled, shall refuse to pay the charges and expenses aforesaid, they shall be liable for the same; and if any house-keeper shall entertain such poor person, and shall not give notice thereof to the board of commissioners of his county, or one of them, within one month, the person so offending shall forfeit and pay ten dollars.—Rev., 1334.

CHAPTER XXI.

COUNTY PRISONS.

1. Jails.

2012. Built and repaired by commissioners.—There shall be kept and maintained in good and sufficient repair in every county, a court-house and common jail, at the expense of the county, wherein the same are situated; and the boards of commissioners of the several counties respectively shall lay and collect taxes, from year to year, as long as may be necessary, for the purpose of building, repairing and furnishing their several court-houses and jails, in such manner as they shall think proper; and from time to time shall order and establish such rules and regulations for the preservation of the court-house, and for the government and management of the prisons, as may be conducive to the interests of the public, and the security and comfort of the persons confined.—Rev., 1335.

2013. Five apartments.—The common jails of the several counties shall be provided with at least five separate and suitable apartments, one for the confinement of white male criminals; one for white female criminals; one for colored male criminals; one for colored female criminals; and one for other prisoners.—Rev., 1336.

Note.—Misdemeanor to confine prisoners in improper apartment, see s. 3660 of the Revisal.

2014. Heated.—It shall be the duty of the board of commissioners in every county to have the common jails so heated by furnaces, stoves, or otherwise, as to render them warm and comfortable.—Rev., 1337.

Note.—Commissioners liable to indictment for failure to heat, see s. 3574 of the Revisal.

2015. Bedding furnished.—The board of county commissioners, from time to time, as may be necessary, shall order the sheriff of the county to purchase, for the use of their jail, a certain number of good warm blankets or other suitable bedclothing, which shall be securely preserved by the jailer, and furnished to the prisoners for their use and comfort, as the season or other circumstances may require; and the sheriff, at least once in every year, shall report to the board of commissioners the condition and number of such blankets and bedclothing.—Rev., 1338.

2016. Prison bounds.—For the preservation of the health of such persons as shall be committed to jail, the board of commissioners of each county shall mark out such a parcel of the land as they shall think fit, not exceeding six acres, adjoining the prison, for the rules thereof; and every prisoner not committed for treason or felony, giving bond with good security to the sheriff of the county to keep within the rules, shall have liberty to walk therein, out of the prison, for the preservation of his health; and on keeping continually within the said rules, shall be deemed to be in law a true prisoner; and that every person may know the true bounds of said rules, they shall be recorded in the county records, and the marks thereof shall be renewed as occasion may require.—Rev., 1339.

2017. Bonds returned to court.—Every bond taken of any person confined for an offense, or otherwise than on process issuing on a civil case, shall be returned to the court by whose order or process such person is confined, or which may be entitled to cognizance of the matter, and shall be of the force and effect of a recognizance; and on breach thereof shall be forfeited, and shall be collected as a forfeiture, in the name and for the use of the state, and applied as other forfeited recognizances.—Rev., 1340.

2018. Bond on *capias* in civil action.—Every bond given by any person committed in arrest and bail, or in custody after final judgment, shall be assigned by the sheriff to the party at whose instance such person was committed to jail, and shall be returned to the office of the clerk of the court where the judgment was rendered, and shall have the force of a judgment; and if any person, who shall obtain the rules of any prison, as aforesaid, shall escape out of the same, before he shall have paid the debt or damages and costs according to the condition of his bond, the court where the bond is filed, upon motion of the assignee thereof, shall award execution against such person and his sureties for the debt or damages and costs, with interest from the time of escape till payment; and no person committed to jail on such execution shall be allowed the rules of prison: Provided, the obligors have ten days previous notice of such motion, in writing; but they shall not be admitted to deny the making of the bond in their answer, unless by affidavit they prove the truth of the plea.—Rev., 1341.

2. Prisoners Kept and Cared for.

2019. United States prisoners kept.—When a prisoner shall be delivered to the keeper of any jail by the authority of the United States, such keeper shall receive the prisoner, and commit him accordingly; and every keeper of a jail refusing or neglecting to take possession of a prisoner delivered to him by the authority aforesaid, shall be subject to the same pains and penalties as for neglect or refusal to commit any prisoner delivered to him under the authority of the state. And the allowance for the maintenance of any prisoner committed as aforesaid shall be equal to that made for prisoners committed under the authority of the state.—Rev., 1342.

2020. Jailer to cleanse jail, furnish food and water.—The sheriff or keeper of any jail shall, every day, cleanse the room of the prison in which any prisoner shall be confined, and cause all filth to be removed therefrom; and shall also furnish the prisoner plenty of good and wholesome water, three times in every day; and shall furnish each prisoner fuel, not less than one pound of wholesome bread, one pound of good roasted or boiled flesh, and every necessary attendance.—Rev., 1343.

2021. May purchase necessities.—Prisoners shall be allowed to purchase and procure such necessities, in addition to the diet furnished by the jailer, as they may think proper; and to provide their own bedding, linen and clothing, without paying any perquisite to the jailer for such indulgence.—Rev., 1344.

Note.—Jailer injuring prisoner liable for treble damages and guilty of misdemeanor, see s. 3661 of the Revisal.

2022. Escape apprehended, guard; compensation.—Whenever the sheriff of the county, or keeper of the jail, shall apprehend that there is danger of a prisoner escaping, through the insufficiency of the jail or other cause, it shall be his duty, without delay, to make information thereof to a judge of the superior court, the attorney-general, or a solicitor, if any of those officers be in the county, and if not, then to three justices of the peace, and they are authorized, if they deem it advisable, to furnish the sheriff or keeper of the jail with an order in

writing, addressed to the commanding officer of the militia of the county, setting forth the danger, and requiring him forthwith to furnish such guard as to him may appear to be suitable for the occasion. For which service the persons ordered on guard shall receive such compensation as militiamen in actual service for defense of the state; and on application for pay, the letter to the commanding officer, on which the guard was ordered, and the certificate of such officer, countersigned by the sheriff or jailer, together with the deposition of the officer of the guard, stating the time of service, and that it was faithfully performed, shall be sufficient to authorize the payment of the same.—Rev., 1345.

2023. Prisoners to pay charges.—Every person committed by lawful authority, for any criminal offense or misdemeanor, shall bear all reasonable charges for guarding and carrying him to jail, and also for his support therein until released; and all the estate which such person possessed at the time of committing the offense shall be subjected to the payment of such charges and other prison fees, in preference to all other debts and demands; and if there be no visible estate whereon to levy such fees and charges, the amount shall be paid by the county.—Rev., 1346.

2024. Guarding and removing, by what county paid.—The expense for guarding prisons shall be paid by the county wherein the prison is situated; and for conveying prisoners, as also the expense attending such prisoners while in jail, when the same may be chargeable on the county, shall be paid by the county from which the prisoner is removed.—Rev., 1347.

2025. Transferred to successor by indenture.—The delivery of prisoners, by indenture between the late and present sheriff, or the entering on record in court the names of the several prisoners, and the causes of their commitment, delivered over to the present sheriff, shall be sufficient to discharge the late sheriff from all liability for any escape that shall happen.—Rev., 1348.

2026. Care of tuberculous prisoners.—The board of county commissioners of the respective counties of North Carolina shall provide in the jail-house or in any camp or place where prisoners are committed for keeping or sentenced to a term of imprisonment in any county in the state of North Carolina, separate cells or rooms or a place in which shall be confined any prisoner or prisoners who may be committed for keeping or sentenced to said prison or place of confinement for a term of imprisonment, who has been examined by the county superintendent of health and pronounced by the said county superintendent of health as being affected with tuberculosis.

(2) It shall be the duty of any sheriff of any county when a prisoner is placed in his custody for the purpose of being committed to jail or any place of confinement mentioned in this act, who said sheriff has been informed or has any reason to believe or suspect is suffering with tuberculosis, to have any such prisoner examined by the county superintendent of health, and if said prisoner shall be pronounced by said county superintendent of health as a tuberculous prisoner, then said prisoner shall be separated from the other prisoners and confined in a separate cell or place provided for by this act.

(3) It shall be the duty of the board of directors of the state's prison to provide separate cells or apartments in the said state's prison in which shall be kept any prisoner or prisoners who may be sentenced to that institution for a term of imprisonment, who after being examined and pronounced by the physician in charge as being affected with tuberculosis.

(4) The cells and places of confinement provided for in this act for prisoners affected with tuberculosis shall be kept exclusively for said

tuberculous prisoners, and under no circumstances or conditions shall any other prisoner be committed or sentenced to the institutions and places of imprisonment mentioned in this act, who is well and not affected with tuberculosis, be confined in the cells or places of confinement therein provided for tuberculous prisoners: Provided further, that when said cells or places of confinement provided for in this act either in the county jail or camps or the state's prison have been used and occupied by any prisoners affected with tuberculosis, the said cells or places of confinement shall not be used for any other prisoners until the county superintendent of health or the physician in charge and health authorities of the state's prison have been notified, and the said cells or places of confinement have been thoroughly fumigated and disinfected under the supervision of the said county superintendent of health or the physician in charge and the health authorities of said states' prison, in the manner prescribed and required by the state board of health.

(5) Whenever any prisoner or prisoners shall be committed to any of the prisons or places of confinement designated in this act, it shall be the duty of the sheriff of the county or the warden of the state's prison, as the case may be, in the event any such prisoner or prisoners be known or suspected by said authorities to be suffering with tuberculosis, to have any such prisoner or prisoners examined by the county superintendent of health or the physician in charge within five days after they have been committed or sentenced to said prison.

(6) Nothing contained in this act shall be construed as to interfere with or prevent the county or state authorities from working together all prisoners on public works as now provided for by law.

(7) Any person or persons violating any of the terms or provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be punished in the discretion of the court.—Laws 1907, c. 567.

3. Of Adjoining County Used.

2027. By ministerial officers, when.—The sheriffs, constables, and other ministerial officers of any county, in which there may be no jail, shall have authority to confine any prisoner arrested on process, civil or criminal, and held in custody for want of bail, in the jail of any adjoining county, until bail be given or tendered. And any sheriff or jailer having a prisoner in his custody, by virtue of any mode of commitment provided in this chapter, shall be liable, civilly and criminally, for his escape, in the same manner as if such prisoner had been confined in the prison of his proper county.—Rev., 1349.

2028. When no jail, or jail unsafe.—Whenever it shall happen that there shall be no jail, or an unfit or insecure jail, in any county, the superior court judges, justices of the peace, and all judicial officers of such county may commit all persons who may be brought before them, whether in a criminal or civil proceeding, to the jail of any adjoining county, for the same causes, and under the like regulations that they might have ordered commitments to the usual jail; and the sheriffs, constables, and other officers of such county, in which there may be no jail, or an unfit one, and the sheriffs or keepers of the jails of the adjoining counties, shall obey any order of commitment so made.—Rev., 1350.

Note.—Failure to obey order of commitment, see s. 3603 of the Revisal.

2029. When jail destroyed.—Whenever the jail of any county shall be destroyed by fire or other accident, any justice of the peace of such county may cause all prisoners who may then be confined therein to be brought before him; and upon the production of the process, under which any prisoner was confined, shall order his commitment to the

jail of any adjacent county; and the sheriff, constable or other officer of the county, deputed for that purpose, shall obey the order; and the sheriff or keeper of the common jail of such adjacent county shall receive such prisoners upon the order aforesaid.—Rev., 1351.

4. Farming Out Prisoners.

2030. Counties and towns may.—The board of commissioners of the several counties, within their respective jurisdictions, or such other county authorities therein as may be established, and the mayor and intendent of the several cities and towns of the state, shall have power to provide under such rules and regulations as they may deem best for the employment on the public streets, public highways, public works, or other labor for individuals or corporations, of all persons imprisoned in the jails of their respective counties, cities and towns, upon conviction of any crime or misdemeanor, or who may be committed to jail for failure to enter into bond for keeping the peace or for good behaviour, and who fail to pay all the costs which they are adjudged to pay, or to give good and sufficient security therefor: Provided, such prisoner or convict shall not be detained beyond the time fixed by the judgment of the court: Provided further, the amount realized from hiring out such persons shall be credited to them for the fine and bill of costs in all cases of conviction: Provided also, it shall not be lawful to farm out any such convicted person who may be imprisoned for the nonpayment of a fine, or as punishment imposed for the offense of which he may have been convicted, unless the court before whom the trial is had shall in its judgment so authorize.—Rev., 1352.

2031. Party hiring may prevent escape.—The party in whose service said convicts may be, may use the necessary means to hold and keep them in custody, and to prevent their escape.—Rev., 1353.

2032. Sheriff has control.—All convicts hired or farmed out by the county or other municipal authorities shall at all times be under the supervision and control, as to their government and discipline, of the sheriff, or his deputy, of the county in which they were convicted and imprisoned, and the sheriff, or his deputy, shall be deemed a state officer for the purpose of this section.—Rev., 1354.

5. Convicts on Public Roads.

2033. What convicts so sentenced.—When any county has made provision for the working of convicts upon the public roads, or when any number of counties have jointly made provision for working convicts upon the public roads, it shall be lawful for, and the duty of the judge holding court in such counties, to sentence to imprisonment at hard labor on the public roads for such terms as are now prescribed by law for their imprisonment in the county jail or in the state's prison, the following classes of convicts: First, all persons convicted of offenses the punishment whereof would otherwise be wholly, or in part, imprisonment in the common jail; second, all persons convicted of crimes the punishment whereof would otherwise wholly or in part be imprisonment in the state's prison for a term not exceeding ten years. In such counties there may also be worked on the public roads, in like manner, all persons sentenced to imprisonment in jail by any magistrate, and also all insolvents who shall be imprisoned by any court in said counties for nonpayment of costs in criminal causes may be retained in imprisonment and worked on the public roads until they shall have repaid the county to the extent of the half fees charged up against the county for each person taking the insolvent oath. The rate of compensation to be allowed each insolvent for work on the public roads shall be fixed by the county commissioners at a just and fair compensation, regard being had to the amount of work of which each insolvent is capable.—Rev., 1355.

2034. Under control of county authorities.—The convicts sentenced to hard labor upon the public roads, under the provisions of the preceding section, shall be under the control of the county authorities, and the county authorities shall have power to enact all needful rules and regulations for the successful working of convicts upon the public roads: Provided, the county commissioners shall have power to work such convicts on the public roads or in canalizing the main drains and swamps or on other public work of the county.—Rev., 1356.

Note.—See section 2026 *infra* as to tuberculosis convicts.

2035. When sentenced to state's prison.—In all cases where the judge presiding shall be satisfied that there is good reason to fear that an attempt might be made to release or to injure any person convicted of any of the offenses mentioned in the second class, it shall be lawful for the judge to sentence such convicts to imprisonment in the state's prison, as is now provided by law: Provided, that no person who has been convicted and sentenced on a charge of murder, manslaughter, rape, attempt to commit rape, or arson, shall be assigned to county roads under this chapter.—Rev., 1357.

2036. When state's prison to send convicts to county.—In addition to the convicts mentioned in section one thousand three hundred and fifty-five, the board of directors of the state's prison is authorized and directed to furnish to the authorities of any county within the state, convicts, not exceeding twenty-five in number during any one year, for the purpose of working the public roads in said county. The said convicts shall be at all times under the supervision and control as to their government and discipline of the board of directors of the state's prison as in case of hiring convicts to railroad companies. Any county applying for convicts under this chapter shall erect suitable stockades for their safe-keeping and protection, and shall pay the expense of their transportation from and to the state's prison.—Rev., 1358.

2037. Taxes levied to maintain.—The board of county commissioners of the several counties in the state taking advantage of this chapter shall levy a special tax annually as other taxes are levied for the purpose of paying the expenses of said convicts, building of stockades, etc., and the expenses shall be paid by the counties taking advantage of this subchapter.—Rev., 1359.

Note.—For prohibition of women working on roads, see s. 3596 of the Revisal.

6. Houses of Correction..

2038. Commissioners may establish.—The board of commissioners may, when they deem it necessary, establish within their respective counties, one or more convenient houses of correction, with workshops and other suitable buildings for the safe-keeping, correcting, governing, and employing of offenders legally committed thereto. They may also, to that end, procure machinery and material suitable for such employment in said houses, or on the premises; and moreover attach thereto a farm or farms; and all lands purchased for the purposes aforesaid, shall vest in the directors hereinafter provided for, and their successors in office. The said board shall also have power to make, from time to time, such rules and regulations as it may deem proper, for the kind and mode of labor, and the general management of the said houses.—Rev., 1360.

2039. Taxes may be levied.—The board of commissioners, in addition to the ordinary county taxes, shall also, at the time said taxes are laid, lay such tax as may be necessary to carry into effect this subchapter, which shall be collected and paid to the manager at the same time as other county taxes are to be paid; for which, and such other funds as may come into his hands as manager, he shall be accountable;

and he shall disburse the same under the authority of the directors.—Rev., 1361.

2040. Bonds may be issued.—The board of commissioners may, if deemed advisable by them, issue county bonds to raise money to establish the houses and farms herein provided for.—Rev., 1362.

2041. Governor notified of establishment of.—Whenever any work-house or house of correction shall be established in pursuance of this chapter, it shall be the duty of the chairman of the board of commissioners of the county wherein the same shall be established, to certify the fact to the governor, who shall cause it to be noted in a book kept for that purpose.—Rev., 1363.

2042. Directors appointed; duties.—The board of commissioners shall, annually, appoint not less than five nor more than nine directors for each house of correction which may be established, whose duty it shall be to superintend and direct the manager hereinafter named in the discharge of his duties, to visit said houses at least once in every three months; to see that the laws, rules and regulations relating thereto are duly executed and enforced, and that the persons committed to his charge are properly cared for, and not abused or oppressed. The directors shall keep a journal of their proceedings, and publish annually an account of the receipts and expenditures. They shall further make a quarterly report to their respective county commissioners of the general condition of their charge, and of the receipts and expenditures of the institution. They shall also make such by-laws and regulations for the government thereof as shall be necessary, which shall be reported to, and approved by, the said commissioners. The directors shall be paid for the services rendered by the county treasurer, each director first making it appear to the satisfaction of the board of county commissioners, by his oath, the character and extent of the services rendered for which he claims compensation; and such payment shall be made by the county treasurer out of any funds in his hands not otherwise appropriated.—Rev., 1364.

2043. Term of office of directors.—The directors shall continue in office until others shall be appointed; and if any vacancy happens among them, it shall be filled by the residue of the directors.—Rev., 1365.

2044. Manager appointed; bond given.—The board of commissioners shall appoint a manager for each house or establishment, who shall give a bond, with two or more solvent sureties, in such sum as may be required, payable to the state of North Carolina, conditioned for the faithful discharge of his duties. He shall hold his office during the pleasure of the board, and be at all times under the supervision of the directors; and in case of his misconduct, of which they shall be the sole judges, he may be forthwith removed by them and a successor appointed, who shall discharge the duties of the office until another manager shall be appointed by the board of commissioners. It shall be the duty of the manager to receive all persons sent to the house of correction, to keep them during the time of their sentence, and to employ and control them according to the rules and regulations established therefor. He shall have the direction and control over the subordinate officers, assistants and servants, who may be appointed by the directors. He shall make monthly reports to the directors of his management of the institution and his receipts and expenditures.—Rev., 1366.

2045. Manager to assign employment.—The manager shall assign to each person sent to the work-house the kind of work in which such person is to be employed.—Rev., 1367.

2046. Compensation of officers.—The said board of commissioners shall direct what compensation the manager and such subordinate

officers, assistants and servants, as shall be appointed, shall receive, and shall provide the payment thereof.—Rev., 1368.

2047. Sheriff to convey persons committed.—Whenever any person shall be sentenced to a work-house, he shall forthwith be committed by the court to the custody of the sheriff, to whom the clerk shall immediately furnish a certified copy of the sentence, in which it shall be stated (if the fact be so) that the offender is committed as a vagrant. The sheriff shall convey the offender to the work-house, and deliver him to the manager with the certified copy aforesaid, and take the manager's receipt for the body; which receipt the sheriff shall return to the clerk of the board of commissioners, with his indorsement of the times when the offender was committed to him and delivered to the manager, and the clerk shall record the same in a book kept for that purpose, and file the original with the papers in the case.—Rev., 1369.

2048. Absconding offenders punished.—If any offender shall abscond, escape or depart from any house of correction without license, the manager shall have power to pursue, retake and bring him back, and to require all necessary aid for that purpose; and when brought back, the manager may confine him to his work by fetters or shackles, or in such manner as he may judge necessary, or may put him in close confinement in the county jail or elsewhere, until he shall submit to the regulations of the house of correction; and for every escape each offender shall be held to labor in the house of correction for the term of one month in addition to the time for which he was first committed.—Rev., 1370.

2049. Vagrants may be released, when.—If any person committed as a vagrant shall behave well and reform, he may, on the certificate of the manager, be released by the directors. But if otherwise committed, he may be released by the committing authority, upon the certificate of the manager and directors, upon such conditions as they may deem proper.—Rev., 1371.

2050. Suits in name of county.—All suits brought on behalf of the institution shall, unless it be otherwise prescribed, be brought in the name of the county, to the use of the directors of the work-house, without designating such directors by name.—Rev., 1372.

Note.—For Laws 1907, c. 1011, providing that county farm may be considered as house of correction where there is no regular house of correction, see section 216(a) of this volume.

7. Joint Houses of Correction.

2051. Two or more may join.—Any two or more counties, acting through their respective boards of commissioners, may jointly establish one or more convenient houses of correction, as is provided in the preceding sections, for the joint use of the counties so agreeing together; and the same may be established at such place or places, and be in all respects managed under such by-laws, rules and regulations as a majority of the general board of directors, to be appointed as hereinafter directed, shall determine.—Rev., 1373.

2052. Board of directors appointed.—The board of commissioners of each of the respective counties agreeing as aforesaid to the establishment of one or more houses of correction for use jointly with any other county or counties shall annually appoint five directors in behalf of their several counties, and the directors so appointed by each of such counties shall together constitute the general board of directors of any such joint establishment.—Rev., 1374.

2053. General managers appointed.—Said general board of directors shall appoint a manager or superintendent for every such joint establishment, and such assistants and servants as they may deem necessary. The manager shall give bond with two or more able sureties, to be

approved by said board, in such sum as may be required, payable to the state of North Carolina, and conditioned for the faithful performance of his duties. He shall hold his office during the pleasure of the general board of directors, and be, at all times, under their supervision; and of his misconduct they shall be the sole judges, and they may at any time remove him. He shall perform all such duties as may be prescribed by such general board of directors, and all such as may be incident to the office of manager by virtue of this chaptr. The compensation of the manager and such subordinate officers, assistants and servants, as may be appointed by the general board, shall be fixed by said general board.—Rev., 1375.

CHAPTER XXII.

COUNTY REVENUE.

1. Taxes and Fines.

2054. Taxes collected by sheriff.—The county taxes shall be collected by the sheriff of the county, who shall be entitled to the same commissions and be subject to the same rules and regulations in respect to his settlement of the said taxes with the county treasurer as he is in his settlement of the public taxes with the treasurer of the state; and he shall also settle with the county treasurer or board of commissioners for the taxes on the unlisted property in his county, under the same rules and regulations as he accounts with the auditor of the state.—Rev., 1376.

2055. Statement of fines kept by clerk.—It shall be the duty of the clerks of the several courts, and of the several justices of the peace, to enter in a book, to be supplied by the county, an itemized and detailed statement of the respective amounts received by them in the way of fines, penalties, amercements and forfeitures, and said books shall at all times be open to the inspection of the public.—Rev., 1377.

2056. Fines paid treasurer, when; for schools.—All fines, forfeitures, penalties and amercements collected in the several counties by any court or otherwise, shall be accounted for and paid to the county treasurer by the officials receiving them within sixty days after receipt thereof, and shall be faithfully appropriated by the county board of education for the establishment and maintenance of free public schools; and the amounts collected in each county shall be annually reported to the superintendent of public instruction on or before the first Monday in January, by the board of commissioners.—Rev., 1378.

2057. Commissioners expend county funds.—The board of commissioners is invested with full power to direct the application of all moneys arising by virtue of this chapter for the purposes herein mentioned, and to any other good and necessary purpose for the use of the county.—Rev., 1379.

2. Reports of Officers.

2058. Made annually.—Sheriffs, treasurers, clerks of any court, registers of deeds and all other officers of the several counties, into whose hands any public funds may come by virtue or under color of their office, shall make an annual account and report of the amount and management of the same, on the first Monday of December, or oftener if required, in each year, to the board of commissioners. Such report shall give an itemized and detailed account of the public funds received and disbursed, the amount, date and source from which it was

received, and the amount, date and person to whom paid; shall be addressed to the chairman of the board of commissioners for the county, and shall be subscribed and verified by the oath of the party making the same, before any person authorized to administer oaths.—Rev., 1380.

2059. Compelled.—If any person required to make any of the reports hereinbefore provided for shall fail to do so, or if, after a report has been made, the board of commissioners shall disapprove the same, such board may take such legal steps to compel a proper report to be made, either by suit on the bond of such officer failing to comply or otherwise, as said board may deem best.—Rev., 1381.

2060. Registered.—The board of commissioners, if it shall approve of any of the said reports, shall cause the same to be registered in the office of the register of deeds in a book to be furnished to the register of deeds by the county, which book shall be marked and styled "Record of Official Reports," with a proper index of all reports recorded therein, and each official report shall, if approved, be indorsed by the chairman of the board with the word "approved," with the date of approval, and when recorded by the register of deeds he shall indorse thereon the date of registration, the page of the Record of Official Reports upon which the same is registered, sign the same and file it in his office.—Rev., 1382.

2061. Penalty for failure to make.—If any clerk, sheriff, justice of the peace, or other officer, shall fail or neglect to account for and pay over as required by law any taxes on suits, or any fines, forfeitures and amercements as required by this chapter, or shall fail to make the returns herein specified, he shall forfeit and pay five hundred dollars, to be recovered in the name of the board of commissioners for the use of the public schools of the county.—Rev., 1383.

3. Claims.

2062. Demand before suit.—No person shall sue any city, county, town, or other municipal corporation for any debt or demand whatsoever unless the claimant shall have made a demand upon the proper municipal authorities. And every such action shall be dismissed unless the complaint shall be verified and contain the following allegations: (1) That the claimant presented his claim to the lawful municipal authorities to be audited and allowed, and that they had neglected to act upon it, or had disallowed it; or (2) that he had presented to the treasurer of said municipal corporation the claim sued on, which had been so allowed and audited, and that such treasurer had notwithstanding neglected to pay it.—Rev., 1384.

Note.—For time in which such demand and action shall be brought, see s. 396 of the Revisal.

2063. Itemized and verified.—No account shall be audited by the board for any services or disbursements, unless it is first made out in items and has attached to and filed with it the affidavit of the claimant that the services therein charged have been in fact made and rendered, and that no part thereof has been paid or satisfied. Each account shall state the nature of the services, and where no specific compensation is provided by law, it shall also state the time necessarily devoted to the performance thereof. The board may disallow or require further evidence of the account, notwithstanding the verification. All county commissioners acting on January the twenty-seventh, one thousand nine hundred and five, or elected theretofore, are released, whether as individuals or in their corporate capacity, from any and all penalties incurred by reason of failure to comply with the provisions of this section, prior to said date.—Rev., 1385.

2064. Numbered as presented.—All accounts presented in any year, beginning at each regular meeting in December, shall be numbered

from one upwards, in the order in which they are presented, and the time of presentation, the names of the persons in whose favor they are made out, and by whom presented, and shall be carefully entered on the minutes of the board; and no such account shall be withdrawn from the custody of the board or its clerk, except to be used as evidence in a judicial proceeding, and after being so used it shall be promptly returned.—Rev., 1386.

2065. Numbered as allowed, when.—The clerk of the board of commissioners, if so ordered by the board, shall number all claims, orders and certificates that may be allowed by the board in a book kept for that purpose, and he shall annually, the day before the board proceeds to lay a county tax for the ensuing year, furnish the chairman of the board with a copy of the same.—Rev., 1387.

2066. Annual statement published.—The board shall cause to be posted at the court-house within five days after each regular December meeting and for at least four successive weeks, or after each regular monthly meeting, if they deem it advisable, and for one week, the name of every individual whose account has been audited, the amount claimed and the amount allowed; and also at the same time and in the same manner post a full statement of county revenue and charges, showing by items the income from every source and the disbursements on every account for the past year, together with the permanent debt of the county, if any, when contracted, and the interest paid or remaining unpaid thereon. The board shall also publish the said statement in some newspaper in the county: Provided, the cost of such publication shall not exceed one-half of a cent a word.—Rev., 1388.

4. Finance Committee.

2067. Election and duties.—The board of commissioners may elect by ballot three discreet, intelligent tax-paying citizens, to be known as the "finance committee," whose duty it shall be to inquire into, investigate and report by public advertisement, at the court-house and one public place in each township of the county, or in a newspaper, at their option, if one be published in the county, a detailed and itemized account of the condition of the county finances, together with any other information appertaining to any funds, misappropriations of county funds, or any malfeasance in office by any county officers.—Rev., 1389.

2068. Oath.—The members of the finance committee before entering upon their duties shall, before the clerk of the superior court, subscribe to the following oath or affirmation:

"I, A. B., do solemnly swear (or affirm) that I will diligently inquire into all matters relating to the receipts and disbursements of county funds and a true report make, without partiality. So help me, God."—Rev., 1390.

2069. Powers of.—The finance committee shall have power and authority to send for persons and papers, and to administer oaths; and any person failing to obey their summons, or to produce promptly any paper relating or supposed to relate to any matter appertaining to the duties of the finance committee, shall be guilty of a misdemeanor, and on conviction in the superior court shall be fined and imprisoned at the discretion of the court.—Rev., 1391.

2070. Penalty of officer failing to settle.—If any clerk, sheriff, constable, county treasurer, register of deeds, justice of the peace, or other officer or commissioner, who may hold any county money, shall fail duly to account for the same, the finance committee shall give such person ten days previous notice, in writing, of the time and place at which they will attend to make a settlement; and every officer receiving notice and failing to make settlement as required by this chapter shall

forfeit the sum of five hundred dollars, to be sued for in the name of the state and prosecuted for the use and at the expense of the county, unless the court shall release the officers from the forfeiture.—Rev., 1392.

2071. Statement by, published.—It shall be the duty of the finance committee to make and publish their report as hereinbefore directed on or before the first Monday of December in each year.—Rev., 1393.

CHAPTER XXIII.

COUNTY TREASURER.

2072. When elected.—In each county there shall be elected biennially by the qualified voters thereof, as provided for the election of members of the general assembly, * * * a treasurer.—Rev., 1394.

2073. How abolished.—The justices of the peace in any county may abolish the office of county treasurer; and thereupon the duties and liabilities attached to the office shall devolve upon the sheriff, who shall be ex officio county treasurer. And in any county where the office of treasurer has been abolished, the justices of the peace may also, if they shall deem it expedient to do so, restore the office of treasurer.—Rev., 1395.

2074. Includes person acting as such; treasurer of county board of education.—The office of county treasurer shall always be construed to refer to, and include, the person authorized by law to perform the duties of that office in any county, if there is no county treasurer therein. The county treasurer shall be ex officio the treasurer of the county board of education.—Rev., 1396.

2075. Sheriff acting as such, bond liable.—In counties where the office of county treasurer may be abolished, and where the sheriff is authorized to perform the duties of county treasurer, the bond he gives as sheriff shall be construed to include his liabilities and duties as such county treasurer, and may be increased to such amount by the board of commissioners as may be deemed necessary to cover the trust funds coming into his hands.—Rev., 1397.

2076. Duties.—It shall be the duty of the treasurer—

1. To Keep County Moneys.

To receive all moneys belonging to the county, and all other moneys by law directed to be paid to him, to keep them separate and apart from his own affairs, and to apply them and render account of them as required by law.

2. To Keep True Accounts.

To keep a true account of the receipts and expenditures of all such moneys, taking proper vouchers in every case in books provided for that purpose at the expense of the county; which said books shall at all times show the date, amount, and from whom he shall have received such moneys; the date, amount and to whom he has paid out any of the said moneys, the total amount received and the total amount paid out during the current fiscal year for school purposes, for general county purposes, for jury fund, and for each special purpose, all separately kept, so that at all times his said books shall correctly and accurately show the condition of the said several accounts. His account of expenditures for general county purposes shall also show separately the amounts expended each year on account of the county home, indigent persons, jails, work-houses, court-house, bridges, insolvent fees, courts, and such other special accounts as shall be required by the board of

commissioners of the county, the total of said accounts being the aggregate amount expended during the fiscal year for general county purposes. He shall post at the court-house door on the first Monday in each month a correct statement of such receipts and expenditures, showing the amount received, and from what source, and the amounts paid out, and to whom, and for what purpose, and the balance in his hands belonging to the county.

3. To Call on County Officers for Funds in Their Hands.

To call on the sheriff, or the clerk of the superior court, or other officer having county moneys in his hands, at least once in each month, or oftener, if necessary, to pay over to him, and to account for all such moneys.

4. To Keep Accounts of Fines, Etc.

To enter in a book to be kept by him the exact amount of any fine, penalty or forfeiture paid over to him, giving the date of payment, the name of the clerk or other person so paying the same, the name of the party from whom such fine, penalty or forfeiture was collected, and in what case.

5. To Exhibit to the Board of Commissioners his Books and Accounts as Treasurer for Examination.

To exhibit his books and accounts and moneys once every three months, or oftener, if the board of commissioners of his county deem it necessary, to a committee to be composed of the chairman of the board of commissioners and one other person to be selected by the board of commissioners, who shall be an expert accountant; and it shall be the duty of this committee to examine the books and accounts of his office, and to see that the accounts are correctly and properly kept, and to count the money in the hands of the treasurer, and to see that it corresponds with the amount shown by the books to be in his hands. And at every such examination of the books and accounts of his office the county treasurer shall exhibit a full, perfect and itemized statement to said committee of the use he has made of every dollar of public funds in his hands since the last exhibition of his books to said committee, and if any part of said funds has been loaned out this statement shall state to whom loaned and on what security and the amount of interest paid on said loan, and such interest shall be by the treasurer covered into the county treasury. This statement shall be sworn to and published in a county newspaper or at the court-house door: Provided, that nothing herein contained shall be construed to authorize the county treasurer to lend any public funds. And if at any time there shall be a deficit in the amount of money in the hands of the treasurer, the committee shall so report to the board of commissioners, whose duty it shall be to institute proceedings in the superior court against said treasurer for violation of his official duties.—Rev., 1398.

2077. Not to speculate in county claims; forfeits office thereby.—No county treasurer purchasing a claim against the county at less than its face value, shall be entitled to charge the county a greater sum than what he actually paid for the same; and the board of commissioners may examine him as well as any other person on oath concerning the matter; and any county treasurer who shall be concerned or interested in any such speculation shall forfeit his office.—Rev., 1399.

2078. Administers property held in trust for county.—In all cases where any property, real or personal, shall have been held by deed, will or otherwise, by any person or officer in trust for any county, or for any charitable use to be administered in, and for, the benefit of such county, or the citizens thereof, such property shall be transferred to, and vest in the county treasurer, to be administered and applied by him under the direction of the board of commissioners, upon the same uses, purposes and trusts as declared by the grantor, testator, or other per-

son in the original deed, devise or other instrument of donation.—Rev., 1400.

2079. To take charge of county trust funds; additional bond required.—It shall be the duty of the county treasurer to take charge of all such trust funds and property; but he shall not do so, without giving a bond payable to the state, in a penalty double the estimated value of said property or funds, with three or more sureties, each of whom shall be worth at least the amount of the penalty of the bond, over and above all his liabilities and property exempt from execution, which bond shall be taken by the board of commissioners, and shall be recorded and otherwise treated and dealt with as the official bond of the treasurer.—Rev., 1401.

2080. Commissioners to keep a record of trust funds.—The board of commissioners shall keep a proper record of all such trust property or charitable funds, and when necessary shall institute proceedings to recover for the treasurer all such as may be unjustly withheld.—Rev., 1402.

2081. Exhibits amounts and condition of trust funds.—The county treasurer, whenever he is required to exhibit to the board of commissioners the financial condition of the county, shall exhibit also distinctly and separately the amount and condition of all such trust funds and property, how invested, secured, used, and other particulars concerning the same.—Rev., 1403.

2082. Pays no claim unless audited.—It shall not be lawful for the county treasurer to pay a claim against the county, unless the same shall have been audited and allowed by the board of commissioners.—Rev., 1404.

2083. Books, papers and money delivered to successor.—Whenever the right of any county treasurer to his office expires, the books and papers belonging to his office, and all moneys in his hands by virtue of his office shall, upon his oath, or in case of his death upon the oath of his personal representative, be delivered to his successor.—Rev., 1405.

2084. Action on bond brought by commissioners.—The board of commissioners shall bring an action on the treasurer's bond, whenever they have knowledge or a reasonable belief of any breach of the bond.—Rev., 1406.

2085. Officers failing to account to treasurer sued by county commissioners.—In case of the failure or refusal of a sheriff, clerk, or other officer to account and pay over, when called on as directed in this chapter, the treasurer shall report the facts to the board of commissioners, who may forthwith bring suit on the official bond of such delinquent officer, and the said board is also allowed to bring suit on the official bond of the clerk of the superior court of any adjoining county.—Rev., 1407.

CHAPTER XXIV .

COURTS—SUPERIOR.

1. Officers of.

2086. Judges to take oath of office.—Every judge before he shall act as such, shall, in open court, or before the governor, or before one of the judges of the supreme or superior court, or before some justice of the peace, take the oath appointed for public officers, and also an oath of office. The officer or court before whom said judge shall qualify, shall cause the judge to subscribe the oaths by him taken, and having certified the same, shall return said oaths to the secretary of state, who

shall carefully preserve them; and if any judge shall act in his office before he shall have taken the oaths directed, he shall forfeit and pay two thousand dollars, one-half to the use of the state and the other half to the person who shall sue for the same.—Rev., 1497.

2087. Vacancies, how filled.—All vacancies occurring by death, resignation or otherwise in the offices of justice of the supreme or judge of the superior court of the state shall be filled for the unexpired term at the next general election for members of the general assembly held after such vacancy is created. The persons elected at such election shall be commissioned by the governor immediately after the ascertainment of the result in the manner provided by law and shall qualify and enter upon the discharge of the duties of the office within ten days after receiving such commission.—Rev., 1498.

2088. Power to discharge drunken solicitor.—When any state solicitor, authorized by election or appointment to act as prosecuting attorney for, or in behalf of the state of North Carolina, in any of the courts of said state, shall appear at such court, in term time, drunk or intoxicated, or when it shall be brought to the knowledge of the judge presiding at such court that the solicitor, whose duty it is to represent the state at such court, is in the town in which such court is being held, drunk or intoxicated, at any time, it shall become the duty of such judge, and he is hereby directed to immediately discharge such solicitor from the duties of such court, for the term then being held, and appoint some competent attorney to act as state solicitor for the term of said court. Said appointee shall be allowed all the fees and compensation belonging to the solicitor for such term.—Rev., 1499.

2. Jurisdiction.

2089. Original.—The superior court shall have original jurisdiction of all civil actions whereof exclusive original jurisdiction is not given to some other court; and of all criminal actions in which the punishment may exceed a fine of fifty dollars, or imprisonment for thirty days; and of all such affrays as shall be committed within one mile of the place where, and during the time, such court is being held; and of all offenses whereof exclusive original jurisdiction is given to justices of the peace, if some justice of the peace shall not within twelve months after the commission of the offense proceed to take official cognizance thereof.—Rev., 1500.

2090. In vacation or at term.—In all cases where the superior court in vacation has jurisdiction, and all of the parties unite in the proceedings, they may apply for relief to the superior court in vacation, or in term time, at their election.—Rev., 1501.

2091. Appellate.—The superior court shall have appellate jurisdiction of all issues of law or of fact, determined by a clerk of the superior court or a justice of the peace, and of all appeals from inferior courts for error assigned, in matters of law, as provided by law.—Rev., 1502.

2092. Equity cases transferred to.—All suits, petitions and other proceedings pending in the late courts of equity, and in the late courts of pleas and quarter sessions, and not determined by final judgment or decree, and all such cases wherein any act was decreed to be done or deed to be executed, and said act was not done or deed executed, may be transferred to the superior court of the county in which they were pending, at the instance of any person interested. And the superior court shall have power to make all orders, judgments and decrees that shall be necessary for finally adjudicating and settling the same.—Rev., 1503.

2093. Surveys in disputed boundaries.—Whenever in any suit pending in the superior court, the bounds of lands shall be drawn in question, the court may, if deemed necessary, order a survey of the lands in

dispute, agreeable to the bounds and lines expressed in each party's titles, and such other surveys as shall be deemed useful; which surveys shall be made by two surveyors appointed by the court, one to be named by each of the parties, or by one surveyor, if the parties agree; and the surveyors shall attend according to the order of the court, and make the surveys, and shall make as many accurate plans thereof as shall be ordered by the court; and for such surveys the court shall make a proper allowance, to be taxed among the costs of the suit.—Rev., 1504.

2094. Contiguous lands held under one survey, how.—Whenever any person owns several tracts of land which are contiguous or adjoining, but held under different deeds and different surveys, it may be lawful for any such person to have all such bodies of land included in one common survey by running around the lines of the outer tracts, and thereupon the possession of any part of said land covered by such common survey shall be deemed and held in law as a possession of the whole and every part thereof: Provided, that nothing in this section shall be construed to affect the rights or claims of persons which have already accrued to any part of said land. In all cases where such common surveys are made as directed by this section, the same may be recorded and registered as in cases of deeds, and shall be evidence in like manner.—Rev., 1505.

2095. Civil process and motions at criminal terms.—Civil process shall be returnable to, and pleadings filed at, all of the courts designated by law as exclusively criminal; motions in civil actions may be heard upon due notice at such criminal terms; and trial in civil actions which do not require a jury may be heard at such criminal terms by consent.—Rev., 1507.

2096. No grand jury drawn nor criminal process returnable to or solicitors attend, civil terms.—No grand juries shall be drawn for the terms of court designated by law as being for the trial of civil cases exclusively, and the solicitors shall not be required to attend nor be entitled to their certificates for attendance upon any exclusively civil terms, unless there are cases on the civil docket in which they officially appear, and no criminal process shall be returnable to any term designated in this chapter for the trial of civil actions alone: Provided, this section shall not apply to Mecklenburg County.—Rev., 1508.

2097. Rotation of judges.—The judges of the superior court shall hold the courts of the several judicial districts successively, according to the following order and system: The judge of each judicial district shall hold the courts of the fall circuit for the year one thousand nine hundred and one in the district of which he is a judge, and successively thereafter he shall hold the courts of the several judicial districts in the order of their numbers, district number one following district number sixteen. The judge riding any spring circuit shall hold all the courts which fall between January and June, both inclusive, and the judge riding any fall circuit shall hold all the courts which fall between July and December, both inclusive.—Rev., 1509.

2098. Court adjourned by sheriff when judge not present.—If the judge of a superior court shall not be present to hold any term of a court at the time fixed therefor, he may order the sheriff to adjourn said court to any day certain during said term, and on failure to hear from said judge it shall be the duty of the sheriff to adjourn the court from day to day until the fourth day of the term inclusive, unless he shall be sooner informed that the judge from any cause can not hold the term. If my sunset on the fourth day the judge shall not appear to hold the term, or if the sheriff shall be sooner advised that the judge can not hold the term, it shall then be the duty of the sheriff to adjourn the court until the next term.—Rev., 1510.

Note.—For term expiring pending trial, see s. 3266 of the Revisal.

4. Special Terms.

2099. What judge holds; exchange of courts.—The governor shall have power to appoint any judge to hold special terms of the superior court in any county, and, by consent of the governor, the judges may exchange the courts of a particular county or counties; but no judge shall be assigned to hold the courts of any district oftener than once in four years; and whenever a judge shall die or resign, his successor shall hold the courts of the district allotted to his predecessor.—Rev., 1511.

2100. How ordered.—Whenever it shall appear to the governor by the certificate of any judge, a majority of the board of county commissioners, or otherwise, that there is such an accumulation of criminal or civil actions in the superior court of any county as to require the holding of a special term for its dispatch, he shall issue an order to the judge of the judicial district, in which such county is, or to any other judge of the superior court, requiring him to hold a special term of the superior court for such county, to begin on a certain Monday, not to interfere with any of the regular terms of the courts of his district and hold for such time as he may designate, unless the business be earlier disposed of. The judge shall attend and hold such court, without extra compensation, except his actual expenses to be paid by the county in which the special term is held.—Rev., 1512.

2101. Notice of.—Whenever the governor shall call a special term of the superior court for any county, he shall notify the chairman of the board of commissioners of the county of such call, and such chairman shall take immediate steps to cause competent persons to be drawn and summoned as jurors for said term; and also to advertise said term at the court-house and at one public place in every township of his county, or by publication of at least two weeks in some newspaper published in his county in lieu of such township advertisement.—Rev., 1513.

2102. Certificate of attendance; compensation.—The clerk shall give the judge a certificate of attendance for the number of days occupied by the court, and the judge shall thereupon be entitled to receive his actual expenses from the commissioners of the county in which the court is held.—Rev., 1514.

2103. Grand juries for.—There shall be no grand jury at any special term, unless the same shall be ordered by the governor.—Rev., 1515.

2104. Jurisdiction.—The special terms of the superior court held in pursuance of this chapter shall have all the jurisdiction and powers that regular terms of the superior court have.—Rev., 1516.

2105. All persons must attend; process not returnable to.—All persons and witnesses summoned at the regular or special term, and officers or others who may be bound to attend the next regular term of the court, shall attend the special term, under the same rules, forfeitures and penalties as if the term were a regular term. But no process shall be made returnable thereto except subpoenas, or other process for the attendance of witnesses.—Rev., 1517.

2106. Subpoenas returnable to.—Subpoenas may issue returnable on any day of any special term.—Rev., 1518.

5. Practice.

2107. Minutes read each morning.—Every morning during the term the judge presiding shall order the reading of the minutes of said court for the day preceding, and the minutes of the last day shall be read immediately preceding the final adjournment of said term.—Rev., 1519.

2108. Nonsuit not allowed after verdict.—In actions where a verdict shall pass against the plaintiff, judgment shall be entered against him.—Rev., 1520.

2109. Suit for penalty, plaintiff may reply fraud to plea of release.—If an action be brought in good faith by any person to recover a penalty under a law of this state, or of the United States, and the defendant shall set up in bar thereto a former judgment recovered by or against him in a former action brought by any other person for the same cause, then the plaintiff in such action, brought in good faith, may reply that the said former judgment was obtained by covin; and if the collusion or covin so averred be found, the plaintiff in the action sued with good faith shall have recovery; and no release made by such party suing in covin, whether before action brought or after, shall be in anywise available or effectual.—Rev., 1521.

2110. Suit on bonds; defendant may plead satisfaction.—When an action shall be brought on any single bill or on any judgment, if the defendant had paid the money due upon such bill or judgment before action brought, or where the defendant hath made satisfaction to the plaintiff of the money due on such bill or judgment in other manner than by payment thereof, such payment or satisfaction may be pleaded in bar of such action; and where only part of the money due on such single bill or judgment hath been paid by the defendant, or satisfied in other manner than by payment of money, such part payment or part satisfaction may be pleaded in bar of so much of the money due on such single bill or judgment, as the same may amount to; and where an action is brought on any bond which hath a condition or defeasance to make void the same upon the payment of a lesser sum at a day or place certain, if the obligor, his heirs, executors or administrators have, before the action brought, paid to the obligee, his executor or administrator, the principal and interest due by the condition or defeasance of such bond, though such payment were not made strictly according to the condition or defeasance; or if such obligor, his heirs, executors or administrators have before action brought made satisfaction to the plaintiff of the principal and interest due by the condition or defeasance of such bond, in other manner than by payment thereof, yet the said payment or satisfaction may be pleaded in bar of such action, and shall be effectual as a bar thereof, in like manner as if the money had been paid at the day and place, according to the condition or defeasance, and so pleaded.—Rev., 1522.

2111. Sum due with interest and costs, discharges penalty of bonds.—If at any time, pending an action on any bond with a penalty, the defendant shall bring into court, where the action shall be pending, all the principal money and interest due, and also all such costs as have been expended in any suit upon such bond, the said money shall be deemed and taken to be in full satisfaction and discharge of said bond, and the court shall give judgment accordingly.—Rev., 1523.

2112. Proceeds of judicial sales collected on motion.—The supreme and other courts ordering a judicial sale, or having possession of the bonds which may have been taken on such sale, may, on motion, after ten days notice thereof in writing, enter judgment as soon as the money may become due against the debtors or any of them, unless for good cause shown the court shall direct some other mode of collection.—Rev., 1524.

2113. Judicial sale confirmed, purchaser deemed owner.—Any person let into possession under any judicial sale confirmed, where the title may be retained as a security for the price, shall be deemed the legal owner of the premises for all purposes of bringing suits for injuries thereto, after the day of sale, by trespass or wrongful possession taken or continued, in the same manner as if the title had been conveyed

to him on the day of sale, unless restrained by some order of the court directing the sale; and the suit so brought shall be under the control of the court ordering the sale.—Rev., 1525.

2114. Procedure after appeal.—In civil cases, at the first term of the superior court after a certificate of the determination of an appeal is received, if the judgment is affirmed the court below shall direct the execution thereof to proceed, and if said judgment is modified, shall direct its modification and performance. If a new trial is ordered the cause shall stand in its regular order on the docket for trial at such first term after the receipt of the certificate from the supreme court.—Rev., 1526.

2115. Officer attending juries sworn.—When any officer (except such as are appointed to attend the grand jury) shall be appointed or summoned to attend any superior court, the clerk, at the time of the first going out of a jury on the trial of any civil or criminal action, shall administer an oath to such officer, faithfully to attend the several juries that may be put under his care during that term, that shall be charged in the trial of any civil or criminal action; and after such officer shall be once so sworn, he shall be considered to all intents and purposes as acting upon the same oath while attending every jury, that he may be called to attend during that term.—Rev., 1527.

2116. Quakers may wear hats in court.—The people called Quakers may wear their hats in courts of judicature, as elsewhere, according to the custom of their sect.—Rev., 1528.

6. Process.

2117. Return on notice, evidence.—When a notice shall issue to the sheriff, his return thereon that the same has been executed shall be deemed sufficient evidence of the service thereof.—Rev., 1529.

2118. When directed to officer of an adjoining county.—If at any time there should not be in the county a proper officer to whom precepts or process, original, mesne or final, of a court of record, shall or ought to be directed, who can lawfully execute the same; or if there be such officer who shall refuse or neglect to execute such precept or process, then the clerk of the court from which the same hath issued or shall issue, upon the facts being verified before him by written affidavit, subscribed by the plaintiff or his agent, shall issue such precept or process to the sheriff of any adjoining county, who shall have power to execute, and shall execute the same, in like manner as if he were sheriff of the county.—Rev., 1530.

2119. Sheriff interested and no coroner, issues to officer of adjoining county.—In all cases where the sheriff of any county shall be interested, if there is no coroner in said county, process may be issued to and shall be executed by the sheriff of any adjoining county.—Rev., 1531.

CHAPTER XXV.

DESCENTS.

2120. Rules of.—When any person shall die seized of any inheritance, or of any right thereto, or entitled to any interest therein, not having devised the same, it shall descend under the following rules:

Rule 1.—Lineal Descent.

Every inheritance shall lineally descend forever to the issue of the person who died last seized, entitled or having any interest therein, but shall not lineally ascend, except as hereinafter provided.

Rule 2.—Females Inherit with Males, Younger with Older Children; Advancements accounted for.

Females shall inherit equally with males, and younger with older children: Provided, that whenever a parent shall die intestate, having in his or her lifetime settled upon or advanced to any of his or her children, any real or personal estate, such child so advanced in real estate shall be utterly excluded from any share in the real estate descended from such parent, except so much thereof as will, when added to the real estate advanced, make the share of him who is advanced equal to the share of those who may not have been advanced, or not equally advanced. And any child so advanced in personal estate shall be utterly excluded from any share in the personal estate of which the parent died possessed, except so much thereof as will, when added to the personal estate advanced, make the share of him who is advanced equal to the share of those who may not have been advanced, or not equally advanced. And in case any one of the children shall have been advanced in real estate of greater value than an equal share thereof which may come to the other children, he or his legal representatives shall be charged in the distribution of the personal estate of such deceased parent with the excess in value of such real estate so advanced as aforesaid, over and above an equal share as aforesaid. And in case any of the children shall have been advanced in personal estate of greater value than an equal share thereof which shall come to the other children, he or his legal representatives shall be charged in the division of the real estate, if there be any, with the excess in value, which he may have received as aforesaid, over and above an equal distributive share of the personal estate.

Rule 3.—Lineal Descendant Represents Ancestor.

The lineal descendants of any person deceased shall represent their ancestor, and stand in the same place as the person himself would have done had he been living.

Rule 4.—Collateral Descent when Estate Derived from Ancestor.

On failure of lineal descendants, and where the inheritance has been transmitted by descent from an ancestor, or has been derived by gift, devise or settlement from an ancestor, to whom the person thus advanced would in the event of such ancestor's death, have been the heir or one of the heirs, the inheritance shall descend to the next collateral relations, capable of inheriting, of the person last seized, who were of the blood of such ancestor, subject to the two preceding rules.

Rule 5.—Collateral Descent when Estate not Derived from Ancestor.

On failure of lineal descendants, and where the inheritance has not been transmitted by descent or derived as aforesaid from an ancestor, or where, if so transmitted or derived, the blood of such ancestor is extinct, the inheritance shall descend to the next collateral relation, capable of inheriting, of the person last seized, whether of the paternal or maternal line, subject to the second and third rules.

Rule 6.—Half Blood Inherits with Whole; Parent from Child.

Collateral relations of the half blood shall inherit equally with those of the whole blood, and the degrees of relationship shall be computed according to the rules which prevail in descents at common law: Provided, that in all cases where the person last seized shall have left no issue capable of inheriting, nor brother, nor sister, nor issue of such, the inheritance shall vest in the father if living, and if not, then in the mother if living.

Rule 7.—Persons Unborn Take, When.

No inheritance shall descend to any person, as heir of the person last seized, unless such person shall be in life at the death of the person last seized, or shall be born within ten lunar months after the death of the person last seized.

Rule 8.—When Widow Takes as Heir.

When any person shall die, leaving none who claim as heir to him, his widow shall be deemed his heir, and as such shall inherit his estate.

Rule 9.—Illegitimate Children Inherit from Mother.

When there shall be no legitimate issue, every illegitimate child of the mother, and the descendant of any such child deceased, shall be considered an heir, and as such shall inherit her estate; but such child or descendant shall not be allowed to claim, as representing such mother, any part of the estate of her kindred, either lineal or collateral.

Rule 10.—Who may Take from Illegitimate Children.

Illegitimate children shall be considered legitimate as between themselves and their representatives, and their estates shall descend accordingly in the same manner as if they had been born in wedlock. And in case of the death of any such child or his issue, without leaving issue, his estate shall descend to such person as would inherit, if all such children had been born in wedlock: Provided, that when any illegitimate child shall die without issue, his inheritance shall vest in the mother in the same manner as is provided in rule six of this chapter.

Rule 11.—Estate for Life of Another, not Devised, an Estate of Inheritance.

Every estate for the life of another, not devised, shall be deemed an inheritance of the deceased owner, within the meaning and operation of this chapter.

Rule 12.—Seizin Defined.

Every person, in whom a seizin is required by any of the provisions of this chapter, shall be deemed to have been seized, if he may have had any right, title or interest in the inheritance.

Rule 13.—Issue of Certain Colored Persons to Inherit.

The children of colored parents born at any time before the first day of January, one thousand eight hundred and sixty-eight, of persons living together as man and wife, are hereby declared legitimate children of such parents or either one of them, with all the rights of heirs at law and next of kin, with respect to the estate or estates of any such parents, or either one of them. If such children be dead their issue shall represent them with all the rights of heirs at law and next of kin provided by this section for their deceased parents or either of them if they had been living; and the provision of this section shall apply to the estates of such children as are now deceased or otherwise.
—Rev., 1556.

CHAPTER XXVI.

DIVORCE AND ALIMONY.

2121. Jurisdiction.—The superior court shall have jurisdiction of complaints for divorce and alimony, or either.—Rev., 1557.

2122. Bond for costs unnecessary.—It shall not be necessary for either party to a proceeding for divorce or alimony to give any undertaking to the other party to secure such costs as such other party may recover.—Rev., 1558.

2123. Venue.—In all proceedings for divorce, the summons shall be returnable to the court of the county in which the applicant resides.—Rev., 1559.

2124. What marriages may be declared void on application of either party.—The superior court in term time, on application made as by law provided, by either party to a marriage contracted contrary to the

prohibitions contained in the chapter entitled Marriage, or declared void by said chapter, may declare such marriage void from the beginning, subject, nevertheless, to the proviso contained in said chapter.—Rev., 1560.

2125. Grounds for absolute divorce.—Marriages may be dissolved and the parties thereto divorced from the bonds of matrimony, on application of the party injured, made as by law provided, in the following cases:

- (1) If the husband shall commit fornication and adultery.
- (2) If the wife shall commit adultery.
- (3) If either party at the time of the marriage was and still is naturally impotent.
- (4) If the wife at the time of the marriage be pregnant, and the husband be ignorant of the fact of such pregnancy and be not the father of the child with which the wife was pregnant at the time of the marriage.
- (5) If there shall have been a separation of husband and wife, and they shall have lived separate and apart for ten successive years, and they shall have resided in this state for that period, and no children shall have been born of the marriage.—Rev., 1561; Laws 1907, c. 89.

2126. From bed and board, grounds.—The superior court may grant divorces from bed and board on application of the party injured, made as by law provided, in the following cases:

- (1) If either party shall abandon his or her family; or,
- (2) Shall maliciously turn the other out of doors; or,
- (3) Shall by cruel or barbarous treatment endanger the life of the other; or,
- (4) Shall offer such indignities to the person of the other as to render his or her condition intolerable and life burdensome; or,
- (5) Shall become an habitual drunkard.—Rev., 1562.

2127. Affidavit to be filed with complaint; provisos.—The plaintiff in a complaint seeking either divorce or alimony, or both, shall file with his or her complaint an affidavit that the facts set forth in the complaint are true to the best of affiant's knowledge and belief, and that the said complaint is not made out of levity or by collusion between husband and wife; and if for divorce, not for the mere purpose of being freed and separated from each other, but in sincerity and truth for the causes mentioned in the complaint; and the plaintiff shall also set forth in such affidavit, either that the facts set forth in the complaint, as grounds for divorce, have existed to his or her knowledge at least six months prior to the filing of the complaint; and that complainant has been a resident of the state for two years next preceding the filing of the complaint; or, if the wife be the plaintiff, that the husband is removing, or about to remove his property and effects from the state, whereby she may be disappointed in her alimony: Provided, if any wife shall file in the office of the superior court clerk of the county where she resides an affidavit setting forth the fact that she intends to file a petition to bring an action for divorce against her husband, and that she has not had knowledge of the facts upon which said petition or action will be based for six months, then and in that case it shall be lawful for such wife to reside separate and apart from her said husband, and to secure for her own use the wages of her own labor during the time she shall so remain separate and apart from her said husband: Provided further, that if such wife shall fail to file her petition or bring her action for divorce within ninety days after the six months shall have expired since her knowledge of the facts upon which she intends to file her said petition or bring her said action, then she shall not be entitled any longer to the benefit of this section.—Rev., 1563; Laws 1907, c. 1008.

2128. Material facts found by jury; parties can not testify to adultery.—The material facts in every complaint asking for a divorce shall be deemed to be denied by the defendant, whether the same shall be actually denied by pleading or not, and no judgment shall be given in favor of the plaintiff in any such complaint until such facts have been found by a jury, and on such trial neither the husband nor wife shall be a competent witness to prove the adultery of the other, nor shall the admissions of either party be received as evidence to prove such fact.—Rev., 1564.

2129. Alimony on divorce from bed and board.—When any court shall adjudge any two married persons divorced from bed and board, it may also decree to the party upon whose application such judgment was rendered, such alimony as the circumstances of the several parties may render necessary; which, however, shall not in any case exceed the one-third part of the net annual income from the estate, occupation or labor of the party against whom the judgment shall be rendered.—Rev., 1565.

2130. Alimony pendente lite.—If any married woman shall apply to a court for a divorce from the bonds of matrimony, or from bed and board, with her husband, and shall set forth in her complaint such facts, which upon application for alimony shall be found by the judge to be true and to entitle her to the relief demanded in the complaint, and it shall appear to the judge of such court, either in or out of term, by the affidavit of the complainant, or other proof, that she has not sufficient means whereon to subsist during the prosecution of the suit, and to defray the necessary and proper expenses thereof, the judge may order the husband to pay her such alimony during the pendency of the suit as shall appear to him just and proper, having regard to the circumstances of the parties; and such order may be modified or vacated at any time, on the application of either party or of any one interested: Provided, that no order allowing alimony pendente lite shall be made unless the husband shall have had five days' notice thereof, and in all cases of application for alimony pendente lite under this or the succeeding section, whether in or out of term, it shall be admissible for the husband to be heard by affidavit in reply or answer to the allegations of the complaint: Provided further, that if the husband shall have abandoned his wife and left the state, or shall be in parts unknown, or shall be about to remove or dispose of his property for the purpose of defeating the claim of his wife, no notice shall be necessary.—Rev., 1566.

2131. Alimony without divorce, when.—If any husband shall separate himself from his wife and fail to provide her with the necessary subsistence according to his means and condition in life, or if he shall be a drunkard or spendthrift, the wife may apply for a special proceeding to the judge of the superior court for the county in which he resides, to have a reasonable subsistence secured to her and to the children of the marriage from the estate of her husband, and it shall be lawful for such judge to cause the husband to secure so much of his estate as may be proper according to his condition and circumstances, for the benefit of his said wife and children, having regard also to the separate estate of the wife.—Rev., 1567.

2132. Alimony in real estate, writ of possession issued.—In all cases in which the court shall grant alimony by the assignment of real estate, the court shall have power to issue a writ of possession when necessary in the judgment of the court to do so.—Rev., 1568.

2133. Effects of absolute divorce.—After a judgment of divorce from the bonds of matrimony, all rights arising out of the marriage shall cease and determine, and either party may marry again unless otherwise provided by law: Provided, that no judgment of divorce shall

render illegitimate any children in esse, or begotten of the body of the wife during coverture.—Rev., 1569.

2133a. Custody of children in divorce.—After the filing of a complaint in any action for divorce, whether from the bonds of matrimony, or from bed and board, both before and after final judgment therein, it shall be lawful for the judge of the court, in which such application is or was pending, to make such orders respecting the care, custody, tuition and maintenance of the minor children of the marriage as may be proper, and from time to time to modify or vacate such orders, and may commit their custody and tuition to the father or mother as may be thought best; or the court may commit the custody and tuition of such infant children, in the first place, to one parent for a limited time, and after the expiration of that time, then to the other parent; and so alternately: Provided, that no order respecting the children shall be made on the application of either party without five days notice to the other party, unless it shall appear that the party having possession or control of such children has removed or is about to remove the children, or himself, beyond the jurisdiction of the court.—Rev., 1570.

Note.—Effect of absolute divorce on right to administer, see secs. 7, 8, 9 of the Revisal.

Effect of abandonment in custody of children, see s. 180 of the Revisal.

Right of appeal in habeas corpus as to custody of children, see s. 1854 of the Revisal.

Effect on property rights, see ss. 2109-2111 of the Revisal.

CHAPTER XXVII.

ELECTRIC COMPANIES.

2134. May use public highways.—Any duly incorporated company possessing the power to construct telegraph or telephone lines, lines for the conveying of electric power or for lights, either or all, shall have the right to construct, maintain and operate such lines along any railroad or other public highway, but such lines shall be so constructed and maintained as not to obstruct or hinder the usual travel on such railroad or other highway.—Rev., 1571.

2135. May acquire easement in right of way.—Such telegraph, telephone or electric power or lighting company shall have power to contract with any person or corporation, the owner of any lands or of any franchise or easement therein, over which its lines are proposed to be erected, for the right of way for planting, repairing and preservation of its poles or other property, and for the erection and occupation of offices at suitable distances for the public accommodation: Provided, that this section shall not be construed as requiring electric power or lighting companies to erect offices for public accommodation.—Rev., 1572.

2136. May exercise right of eminent domain.—Such telegraph, telephone, electric power or lighting company shall be entitled to the right of way over the lands, privileges and easements of other persons and corporations, and the right to erect poles and to establish offices and to take such lands as may be necessary for the establishment of their reservoirs, ponds, dams, works or power-houses, and the right of way through all lands between their reservoirs, ponds, dams, works and power-houses, with the right to divert the water from such ponds or reservoirs and conduct same, by flume, ditch, conduit, waterway, or pipe-line, or in any other manner, to the point of use for the generation of power, at such said power-houses, returning said water to its proper channel after being so used: Provided, that the power given under this act shall not be used to interfere with any mill or power plant

actually in process of construction, or in operation: And provided further, that water-powers, developed or undeveloped, with necessary land adjacent thereto for their development, shall not be taken; and that this act shall not authorize the taking of residence property, or vacant lots adjacent thereto, in towns or cities, or other residence, gardens, orchards, graveyards and cemeteries: Provided further, this act shall not apply to any suit now pending in any of the courts within this state: And provided, that any provisions in any special charters heretofore granted in respect to the exercise of the right of eminent domain which are in conflict with the general law, as herein amended, are hereby repealed, upon making just compensation therefor.—Rev., 1573; Laws 1907, c. 74.

2137. Proceedings to condemn land.—Whenever such telegraph, telephone, electric power or lighting company shall fail on application therefor to secure by contract or agreement such right of way for the purposes aforesaid over the lands, privilege or easement of another person or corporation, it shall be lawful for such company, first giving security for costs, to file its petition before the superior court for the county in which said lands are situate, or into or through which such easement, privilege or franchise extends, setting forth and describing the parcels of land, privilege or easement over which the way, privilege or right of use is claimed, the owners of the land, easement or privilege, and their place of residence, if known, and if not known that fact shall be stated, and such petition shall set forth the use, easement, privilege or other right claimed, and must be sworn to, and if the use or right sought be over or upon an easement or right of way, it shall be sufficient to give jurisdiction if the person or corporation owning the easement or right of way be made a party defendant: Provided, that only the interest of such parties as are brought before the court shall be condemned in any such proceedings, and if the right of way of a railroad or railway company sought to be condemned extends into or through more counties than one, the whole right and controversy may be heard and determined in one county into or through which such right of way extends: Provided further, that it shall not be necessary for the petitioner to make any survey of or over the right of way, nor to file any map or survey thereof, nor to file any certificate of the location of its line by its board of directors.—Rev., 1574.

2138. Copy of petition to be served.—A copy of such petition, with a notice of the time and place the same will be presented to the superior court, must be served on the persons whose interests are to be affected by the proceeding at least ten days prior to the presentation of the same to the said court.—Rev., 1575.

2139. Proceedings same as for railroads.—The proceedings for the condemnation of lands, or any easement, or interest therein, for the use of telegraph, telephone, electric power or lighting companies, the appraisal of the lands, or interest therein, the duty of the commissioners of appraisal, the right of either party to file exceptions, the report of commissioners, the mode and manner of appeal, the power and authority of the court or judge, the final judgment, and the manner of its entry and enforcement, and the rights of the company pending the appeal, shall be as prescribed for condemning lands to the use of railroads.—Rev., 1576.

2140. Commissioners to inspect premises.—In considering the question of damages when the interest sought is over an easement, privilege or right of way, the commissioners may inspect the premises or rest their finding on such testimony as to them may be satisfactory.—Rev., 1577.

CHAPTER XXVIII.

ESTATES.

2141. Estates in tail converted into fee simple.—Every person seized of an estate in tail shall be deemed to be seized of the same in fee simple; and all sales and conveyances, made bona fide and for valuable consideration, since the first day of January, in the year of our Lord one thousand seven hundred and seventy-seven, by any tenant in tail in actual possession of any real estate where such estate hath been conveyed in fee simple, shall be good and effectual in law to bar any tenant in tail and in remainder, of and from all claim, action and right of entry, whatsoever, of, in, and to such entailed estate, against any purchaser, his heirs, or assigns, now in actual possession of such estate, in the same manner as if such tenant in tail had possessed the same in fee simple.—Rev., 1578.

2142. Joint tenancy; survivorship abolished, when.—In all estates, real or personal, held in joint tenancy, the part or share of any tenant dying shall not descend or go to the surviving tenant, but shall descend or be vested in the heirs, executors, or administrators, or assigns respectively of the tenant so dying, in the same manner as estates held by tenancy in common: Provided, that estates held in joint tenancy for the purpose of carrying on and promoting trade and commerce, or any useful work or manufacture, established and pursued with a view of profit to the parties therein concerned, shall be vested in the surviving partner, in order to enable him to settle and adjust the partnership business, or pay off the debts which may have been contracted in pursuit of the said joint business; but as soon as the same shall be effected, the survivor shall account with, and pay, and deliver to the heirs, executors, administrators and assigns respectively of such deceased partner, all such part, share, and sums of money as he may be entitled to by virtue of the original agreement, if any, or according to his share or part in the joint concern, in the same manner as partnership stock is usually settled between joint merchants and the representatives of their deceased partners.—Rev., 1579.

2143. Survivorship among trustees.—In all cases where only a naked trust not coupled with a beneficial interest has been created or exists, or shall be created, and the conveyance is to two or more trustees, the right to perform the trust and make estates under the same shall be exercised by any one of such trustees, in the event of the death of his cotrustee or cotrustees or the refusal or inability of the cotrustee or cotrustees to perform the trust; and in cases of trusts herein named the trustees shall hold as joint tenants, and in all respects as joint tenants held before the year one thousand seven hundred and eighty-four.—Rev., 1580.

Note.—Executors and administrators hold as joint tenants, see s. 166 of the Revisal.
For revocation of contingent estates, see s. 1045 of the Revisal.

2144. How certain contingent limitations construed.—Every contingent limitation in any deed or will, made to depend upon the dying of any person without heir or heirs of the body, or without issue or issues of the body, or without children, or offspring, or descendant, or other relative, shall be held and interpreted a limitation to take effect when such person shall die, not having such heir, or issue, or child, or offspring, or descendant or other relative (as the case may be) living at the time of his death, or born to him within ten lunar months thereafter, unless the intention of such limitation be otherwise, and expressly and plainly declared in the face of the deed or will creating it: Provided, that the rule of construction contained in this section shall not extend to any deed or will made and executed before the fifteenth day of January, one thousand eight hundred and twenty-eight.—Rev., 1581.

2145. Unborn infant in esse may take by deed.—An infant unborn,

but in esse, shall be deemed a person capable of taking by deed or other writing any estate whatever in the same manner as if he were born.—Rev., 1582.

2146. Heirs of living person construed to mean children.—Any limitation by deed, will, or other writing, to the heirs of a living person, shall be construed to be the children of such person, unless a contrary intention appear by the deed or will.—Rev., 1583.

If land is given or granted to a person for life, or for his (or her) natural life, and after his death to his heirs, or heirs of his body, and no other words are superadded which, to a certainty, show that other persons than the heirs general of the first taker are meant, the whole estate vests in the first taker. Even a declaration, however positive, that the estate of the ancestor (the first taker) shall not continue beyond his life, or that his heirs shall take by purchase and not by descent, will be unavailing to defeat the above rule. Section 1329 of The Code does not affect, and was not intended to affect, the rule.—*Nichols v. Gladden*, 117—497.

2147. Conveyance to use, possession transferred to use without livery of seizin.—By deed of bargain and sale, or by deeds of lease and release, or by covenant to stand seized to use, or deed operating by way of covenant to stand seized to use, or otherwise, by any manner or means whatsoever it be, the possession of the bargainor, releasor, or covenantor shall be deemed to be transferred to the bargainee, releasee, or person entitled to the use, for the estate or interest which such person shall have in the use, as perfectly as if the bargainee, releasee or person entitled to the use had been enfeoffed at common law with livery of seizin of the land intended to be conveyed by such deed or covenant.—Rev., 1584.

2148. Rights of grantee of reversion against life tenant.—Whenever a conveyance shall be made by any person of any reversion in lands, rents, tenements, or hereditaments, which at the time of such conveyance shall be held by any other person for a term of life or years, such grantee, his heirs, executors, administrators, and assigns shall have the like advantages against the tenant for life, and against the tenant for years, his executors, administrators, and assigns, by entry for nonpayment of rent and for doing of waste, and the same benefit and advantage and remedies by action for the not performing of other conditions, covenants or agreements, contained and expressed in the indentures or other agreement, by which such tenant for life or years holds the same lands, tenements, rents or hereditaments against said tenant for life or for years, his executors, administrators and assigns, as the grantor or lessor himself or his heirs might have.—Rev., 1585.

2149. Right of life tenant against grantee of reversion.—Lessees and grantees of lands, rents, tenements and hereditaments for term of years or life, their executors, administrators and assigns, shall have like action, advantage and remedy against every person, his heirs and assigns, who shall have any conveyance from any person of the reversion of the same lands, rents, tenements and hereditaments, so let or any parcel thereof, for any condition, covenant or agreement contained or expressed in the indenture of their leases, as the same lessees, or any of them, might and should have had against the said lessor and grantor, and his heirs.—Rev., 1586.

2150. Collateral warranties abolished; warranties by life tenant good only as to heir.—All collateral warranties are abolished; and all warranties made by any tenant for life of lands, tenements or hereditaments, the same descending or coming to any person in reversion or remainder shall be void; and all such warranties, as aforesaid, shall be deemed covenants only, and bind the covenantor in like manner as other obligations.—Rev., 1587.

2151. Spendthrift trusts authorized.—It shall be lawful for any person by deed or will to convey any property, which does not yield at the time of the conveyance a clear annual income exceeding five hundred dollars, to any other person in trust to receive and pay the profits

annually or oftener for the support and maintenance of any child, grandchild or other relation of the grantor, for the life of such child, grandchild or other relation, with remainder as the grantor shall provide; and the property so conveyed shall not be liable for or subject to be seized or taken in any manner for the debts of such child, grandchild or other relations, whether the same be contracted or incurred before or after the grant.—Rev., 1588.

2152. Titles quieted.—An action may be brought by any person against another who claims an estate or interest in real property adverse to him, for the purpose of determining such adverse claims, and by any man or woman against his or her wife or husband or alleged wife or husband who have not lived together as man and wife within the two years preceding, and who at the death of such plaintiff might have or claim to have an interest in his or her estate, and a decree for the plaintiff shall debar all claims of the defendant in the property of the plaintiff then owned or afterwards acquired: Provided, that no such relief shall be granted against such husband or wife or alleged wife or husband, except in case the summons in said action is personally served on such defendant. If the defendant in such action disclaim in his answer any interest or estate in the property, or suffer judgment to be taken against him without answer, the plaintiff can not recover costs. In any case in which judgment has been or shall be docketed, whether such judgment shall be in favor of or against the person bringing such action, or shall be claimed by him, or shall affect real estate claimed by him, or whether such judgment shall be in favor of or against the person against whom such action may be brought, or shall be claimed by him, or shall affect real estate claimed by him, the lien of said judgment shall be such claim of an estate or interest in real estate as is contemplated by this section.—Rev., 1589; Laws 1907, c. 888.

2153. Contingent remainders may be sold; procedure; proviso.—In all cases where there is a vested interest in real estate, and a contingent remainder over to persons who are not in being, or when the contingency has not yet happened which will determine who the remaindermen are, there may be a sale of the property by a proceeding in the superior court at term time, which proceeding shall be conducted in the manner pointed out in this section: Such proceedings may be commenced by summons by any person having a vested interest in the land, and all persons in esse who are interested in said land, shall be made parties defendant and served with summons as in other civil actions, and upon nonresidents or persons whose names and residences are unknown, by publication as now required by law or such service in lieu of publication as now provided by law. In cases where the remainder will or may go to minors or persons under other disabilities, or to persons not in being, or whose names and residences are not known, or who may in any contingency become interested in said land, but because of such contingency can not be ascertained, the judge of the superior court shall, after due inquiry of persons who are in no way interested in or connected with such proceeding, designate and appoint some discreet person as guardian ad litem to represent such remaindermen, upon whom summons shall be served as provided by law for other guardians ad litem, and it shall be the duty of such guardian ad litem to defend such actions, and when counsel is needed to represent him, to make this known to the judge, who shall by an order give instructions as to the employment of counsel and the payment of fees. The court shall, if the interest of all parties require or would be materially enhanced by it, order a sale of such property or any part thereof for reinvestment, either in purchasing or in improving real estate, less expense allowed by the court for the proceeding and sale, and such newly acquired or improved real estate shall be held upon the same contingencies and in like manner as was the property ordered to be sold. The court may authorize the loaning of such

money subject to its approval until such time when it can be reinvested in real estate.—Rev., 1590; Laws 1907, cc. 956, 980.

2154. Sale of contingent remainders validated.—In all cases wherein property has been conveyed by deed, or devised by will; upon contingent remainder, executory devise or other limitation wherein a judgment of a superior court has been rendered authorizing the sale of such property discharged of such contingent remainder, executory devise or other limitation in actions or special proceedings wherein all persons in being who would have taken such property if the contingency had then happened were parties, such judgment shall be valid and binding upon the parties thereto and upon all other persons not then in being: Provided, that nothing herein contained shall be construed to impair or destroy any vested right or estate.—Rev., 1591.

CHAPTER XXIX.

EVIDENCE.

1. Statutes.

2155. How proved.—All statutes, or joint resolutions, passed by the general assembly may be read in evidence from the printed statute book.—Rev., 1592.

2156. Martin's collection; copies certified by secretary of state.—Any private act published by Francis X. Martin, in his collection of private acts, or a copy of any act of the general assembly certified by the secretary of state, shall be received in evidence in every court.—Rev., 1593.

2157. Laws of other states or foreign countries, how proved.—A printed copy of a statute, or other written law, of another state, or of a territory, or of a foreign country, or a printed copy of a proclamation, edict, decree or ordinance, by the executive thereof, contained in a book or publication purporting or proved to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing law, in the judicial tribunals thereof, shall be evidence of the statute law, proclamation, edict, decree, or ordinance. The unwritten, or common law of another state, or of a territory, or of a foreign country, may be proved as a fact by oral evidence. The books of the reports of cases, adjudged in the courts thereof, shall also be admitted as evidence of the unwritten or common law thereof. And either party may also exhibit a copy of the law of such state, territory, or foreign country, duly certified by the secretary of state of this state as having been copied from a printed volume of the laws of such state, territory or country, on file in the state, or supreme court, library, or in the offices of the governor or secretary of state.—Rev., 1594.

Note.—See also s. 2503 of the Revisal.

2158. Town ordinances.—In the trial of appeals from mayors' courts, when the offense charged is the violation of a town ordinance, a copy of the ordinance alleged to have been violated, certified by the mayor, shall be prima facie evidence of the existence of such ordinance.—Rev., 1595.

2. Grants, Deeds and Wills.

2159. Copies certified by secretary of state.—Copies of the plots and certificates of survey, or their accompanying warrants, and all abstracts of grants, which may be filed in the office of the secretary of state, certified by him as true copies, shall be as good evidence, in any court, as the original.—Rev., 1596.

2160. Copies of grants certified by clerk of secretary of state validated.—All copies of grants heretofore issued from the office of the

secretary of state, duly certified under the great seal of the state, and to which the name of the secretary has been written or affixed by the clerk of the said secretary of state, are hereby ratified and approved and declared to be good and valid copies of the original grants and admissible in evidence in all courts of this state when duly registered in the counties in which the land lies; all such copies heretofore registered in said counties are hereby declared to be lawful and regular in all respects as if the same had been signed by the secretary of state in person and duly registered.—Rev., 1597.

2161. Copies certified by register of deeds, evidence, when.—A copy of the record of any deed, mortgage, power of attorney, or other instrument required or allowed to be registered, duly authenticated by the certificate and official seal of the register of deeds of the county where the original or duly certified copy has been registered, may be given in evidence in any of the courts of the state where the original of such copy would be admitted as evidence, although the party offering the same shall be entitled to the possession of the original, and shall not account for the nonproduction thereof, unless by a rule or order of the court, made upon affidavit suggesting some material variance from the original in such registry or other sufficient grounds, such party shall have been previously required to produce the original, in which case the same shall be produced or its absence duly accounted for according to the course and practice of the court.—Rev., 1598.

2162. Copy certified may be registered in another county and given in evidence.—A copy from the office of the register of deeds of any county of the record of any deed, mortgage, power of attorney or other instrument required or allowed to be registered, duly authenticated by the certificate and official seal of the register of deeds of such county, may, upon presentation to the register of deeds of any other county, be registered without further proof, and the record thereof, or a duly certified copy of the same, may be given in evidence in any court in the state where the original of such copy would be admitted as evidence, although the party offering the same shall be entitled to the possession of the original, and shall not account for the nonproduction thereof, unless by a rule or order of the court, made upon affidavit suggesting some material variance from the original in such registry or other sufficient grounds, such party shall have been previously required to produce the original, in which case the same shall be produced or its absence duly accounted for according to the course and practice of the court.—Rev., 1599.

Note.—See Conveyances.

For record of surveys as evidence, see s. 1723 of Revisal.

For registration of certificate of survey as evidence, see s. 2663 of Revisal.

See also s. 988 of Revisal.

2163. Evidence to support title under H. E. McCulloch.—In all actions or suits, wherein it may be necessary for either party to prove title, by virtue of a grant or grants made by the king of Great Britain or Earl Granville to Henry McCulloch, or Henry Eustace McCulloch, it shall be sufficient for such party, in the usual manner, to give evidence of the grant or conveyance from the king of Great Britain or Earl Granville to the said Henry McCulloch, or Henry Eustace McCulloch, and the mesne conveyances thereafter, without giving any evidence of the deed or deeds of release, relinquishment or confirmation of Earl Granville to the said Henry McCulloch, or Henry Eustace McCulloch, or the power or powers of attorney by which the conveyances from the said Henry McCulloch, or Henry Eustace McCulloch, purport to have been made.—Rev., 1600.

2164. Grant or copy from proprietor, sufficient evidence of title under him.—In all trials where the titles of either plaintiff or defendant shall be derived from Henry Eustace McCulloch, or Henry McCulloch, out of their tracts number one and three, it shall not be required of

such party to produce, in support of his title, either the original grant from the crown to the proprietors, or a registered copy thereof; but in all such cases the grant or deed executed by such reputed proprietors, or by his or their lawful attorney, or a certified copy thereof, shall be deemed and held sufficient proof of the title of such proprietors, in the same manner as though the original grants were produced in evidence.—Rev., 1601.

2165. Deeds registered and lost, registry lost, presumed in due form.—Whenever it shall be shown in any judicial proceeding, that a deed or conveyance of real estate has been lost or destroyed, and that the same had been registered, and that the register's book containing the copy has been destroyed by fire or other accident, so that a copy thereof can not be had, it shall be presumed and held, unless its contents be shown to have been otherwise, that such deed or conveyance transferred an estate in fee simple, if the grantor was entitled to such estate at the time of conveyance; and that it was made upon sufficient consideration.—Rev., 1602.

2166. Copy of will.—Copies of wills, duly certified by the proper officer, may be given in evidence in any proceeding wherein the contents of the will may be competent evidence.—Rev., 1603.

2167. Written instruments proved otherwise than by attesting witnesses; not to affect registration.—It shall not be necessary to prove by the attesting witness instruments to the validity of which the attestation is not requisite, and such instruments may be proved by admission or otherwise as if there had been no attesting witness thereto: Provided, that this section shall not affect the method and manner of proving instruments for registration.—Rev., 1604.

2168. Evidence to fit the land to the description.—In all actions for the possession of or title to any real estate parol testimony may be introduced to identify the land sued for, and fit it to the description contained in the paper-writing offered as evidence of title or of the right of possession, and if from this evidence the jury is satisfied that the land in question is the identical land intended to be conveyed by the parties to such paper-writing, then such paper-writing shall be deemed and taken to be sufficient in law to pass such title to or interest in such land as it purports to pass: Provided, that such paper-writing is in all other respects sufficient to pass such title or interest.—Rev., 1605.

Note.—For vagueness of description in a deed, see s. 948 of Revisal.

2169. Recitals in tax deeds in Haywood and Henderson.—In all legal controversies touching lands in the counties of Haywood and Henderson, in which either party shall claim title under any sale for taxes alleged to have been due and laid, in and for the year one thousand seven hundred and ninety-six, or any preceding year, the recital contained in the deed of assurance, made by the sheriff or other officer conveying or assuring the same, of the taxes having been laid and assessed, and of the same having remained due and unpaid, shall be held and taken to be prima facie evidence of the truth of each and every of the matters so recited.—Rev., 1606.

2170. Copies of wills in secretary of state's office; proviso.—Copies of wills filed or recorded in the office of the secretary of state, attested by the secretary, may be given in evidence in any court, and shall be taken as sufficient proof of the devise of real estate, and are declared good and effectual to pass the estate therein devised: Provided, that no such will may be given in evidence in any court nor taken as sufficient proof of the devise unless a certificate of probate appear thereon.—Rev., 1607.

2171. Copies of wills recorded in wrong counties.—Whereas, by reason of the uncertainty of the boundary lines of many of the counties

of the state, wills have been proved, recorded and registered in the wrong county, whereby titles are insecure; for remedy whereof: The registry or duly certified copy of the record of any will, duly recorded, may be given in evidence in any of the courts of this state.—Rev., 1608.

2172. Proved will lost, not recorded, copy evidence.—When any will which may have been proved and ordered to be recorded shall have been destroyed during the late war, before it was recorded, a copy of such will, so entitled to be admitted to record, though not certified by any officer, shall, when the court shall be satisfied with the genuineness thereof, be ordered to be recorded, and shall be received in evidence whenever the original or duly certified exemplification would be; and such copies may be proved and admitted to record under the same rules, regulations and restrictions as are prescribed in the chapter entitled *Burnt and Lost Records*.—Rev., 1609.

2173. Copies of grants in Burke.—Copies of grants issued by the state within the county of Burke prior to the destruction of the records of said county by General Stoneman in the year one thousand eight hundred and sixty-five, shall be admitted in evidence in all actions when the same are duly registered; and when the original grants are lost, destroyed or can not be found after due search, it shall be presumed that the same were duly registered within the time prescribed by law, as provided upon the face of original grant.—Rev., 1610.

2174. Copies of lost records in Bladen.—Whereas, the most of the records in the office of the clerk of the superior court of Bladen county were damaged by fire, and are in such a mutilated condition that it is impossible to use them, and several of them being of almost daily use, especially the judgment docket and will books: The clerk of the superior court of Bladen county shall transcribe the judgment docket and index books and the will books in his office, and all other books in said office containing records made since the year one thousand eight hundred and sixty-eight, and the records so transcribed shall have the same force and effect as the original records would have, and shall be received in evidence as the original records and be *prima facie* evidence of their correctness, and of the sufficiency of their probate, though the probates are lost and are not transcribed.—Rev., 1611.

2175. Copies of records from Tyrrell.—Copies of records of the county of Tyrrell between the years one thousand seven hundred and thirty-five and one thousand seven hundred and ninety-nine, when copied in a book and certified to by the clerk of the superior court of Tyrrell county as to the records of his office and by the register of deeds as to the records of his office, and deposited in their respective offices in Washington county, shall be treated in all respects as original records and received as evidence in all courts of Washington county.—Rev., 1612.

2176. Copies of grants in Moore.—Copies of grants for land situated in Moore county and the counties of which Moore was a part, entered in a book, and the book being certified under the seal of the secretary of state, shall have the force and effect of the originals and be evidence in all courts.—Rev., 1613.

2177. Wills in Haywood.—All wills recorded by the clerk of the superior court of Haywood county, under and by virtue of chapter eight of the laws of one thousand eight hundred and eighty-five, shall be deemed and held to have been duly probated and recorded, subject to the right of any person interested to show by competent proof that said will has never been proved and recorded.—Rev., 1614.

2178. Records in Anson county.—The copies of the deeds and deed books and of the wills and will books made in Anson county under the act of March second, one thousand nine hundred and five, shall have the same force and effect as the original deeds and deed books copied

and as the original wills and will books copied, and shall take the place of said original deeds and deed books and wills and will books as evidence in all court procedure; and wherever said deed books or will books are ordered or directed to be produced in court by subpoena or other order of court, the copies made under such act shall be produced, unless the court shall specially order the production of the original books, and the copies so produced in court shall have the same validity and effect and be used for the same purposes, with the same effect as the original books.—Rev., 1615.

3.—Official Writings.

2179. Copies of official writings.—Copies of all official bonds, writings, papers, or documents, recorded or filed as records in any court, or public office, or lodged in the office of the governor, treasurer, auditor, secretary of state, attorney-general or adjutant-general, shall be as competent evidence as the originals, when certified by the keeper of such records or writings under the seal of his office, when there is such seal, or under his hand when there is no such seal, unless the court shall order the production of the original. Copies of the records of the board of county commissioners shall be evidence when certified by the clerk of the board under his hand and seal of the county.—Rev., 1616.

2180. Copies from public records of the state or United States, evidence; how authenticated.—All copies of bonds, contracts or other papers relating to or connected with the settlement of any account or any part thereof between the United States and an individual, or extracts therefrom when complete on any one subject, or copies from the books or papers on file, or records of any public office in the state or the United States, shall be received in evidence and entitled to full faith and credit in any of the courts of this state when certified to by the chief officer in said office or department to be true copies and authenticated under the seal of said office or department.—Rev., 1617.

Note.—Pleadings incompetent in criminal prosecutions, see s. 493 of Revisal.

4. Records, Etc., Other States.

2181. Records of administration and letters testamentary in other states, how certified.—When letters testamentary or of administration on the goods and chattels of any person deceased, being an inhabitant in another state or territory, have been granted, or a return or inventory of the estate has been made, a copy of the record of administration or of the letters testamentary, and a copy of an inventory or return of the effects of the deceased, after the same has been granted or made, agreeable to the laws of the state where the same has been done, being properly certified, either according to the act of congress or by the proper officer of the said state or territory, shall be allowed as evidence.—Rev., 1618.

2182.—Wills or deeds in other states, how proven.—In cases where inhabitants of other states or territories, by will or deed, devise or convey property situated in this state, and the original will or deed can not be obtained for registration in the county where the land lies, or where the property shall be in dispute, a copy of said will or deed (after the same has been proved and registered or deposited, agreeable to the laws of the state where the person died or made the same) being properly certified, either according to the act of congress, or by the proper officer of the said state or territory, shall be read as evidence.—Rev., 1619.

Note.—See also ss. 3130, 3181 of Revisal.

5. Counsel and Physicians.

2183. Fraud on the state, counsel must testify; proviso.—In cases where fraud upon the state is charged it shall not be sufficient cause

to excuse any one from imparting any evidence or information legally required of him, because he came into the possession of such evidence or information by his position as counsel or attorney before the consummation of such fraud, and any person refusing for such cause to answer any question when legally required so to do shall be guilty of contempt, and punished at the discretion of the court or other body demanding such information: Provided, that it shall not be competent to introduce any admissions thus made on the trial of any persons making the same.—Rev., 1620.

2184. Privilege of attending physicians and surgeons.—No person, duly authorized to practice physic or surgery, shall be required to disclose any information which he may have acquired in attending a patient in a professional character, and which information was necessary to enable him to prescribe for such patient as a physician, or to do any act for him as a surgeon: Provided, that the presiding judge of a superior court may compel such disclosure, if in his opinion the same is necessary to a proper administration of justice.—Rev., 1621.

6. Accounts.

2185. Book accounts under sixty dollars, and within two years.—When any person shall bring an action upon a contract, or shall plead, or give notice of, a setoff or counterclaim for goods, wares and merchandise by him sold and delivered, or for any work done and performed, he shall file his account with his complaint, or with his plea or notice of setoff or counterclaim, and if upon trial of the issue, or executing a writ of inquiry of damages in such action, he shall declare upon his oath that the matter in dispute is a book account, and that he hath no means to prove the delivery of any of the articles which he then shall propose to prove by himself but by this book; in that case such book may be given in evidence, if he shall make out by his own oath that it doth contain a true account of all the dealings, or the last settlement of accounts between himself and the opposing party, and that all the articles therein contained, and by him so proved, were bona fide delivered, and that he has given the opposing party all just credits; and such book and oath shall be received as evidence for the several articles so proved to be delivered within two years next before the commencement of the action, but not for any article of a longer standing, nor for any greater amount than sixty dollars.—Rev., 1622.

2186. Book accounts proved by personal representative.—In all actions where executors and administrators are parties, such book account for all articles delivered within two years previous to the death of the deceased may be proved under the like circumstances, rules and conditions; and in such case, the executor or administrator may prove by himself that he found the account so stated on the books of the deceased; that there are no witnesses, to his knowledge, capable of proving the delivery of the articles which he shall propose to prove by said book, and that he believes the same to be just, and doth not know of any other or further credit to be given than what is therein mentioned: Provided, that if two years shall not have elapsed previous to the death of the deceased, the executor or administrator may prove the said book account, if the suit shall be commenced within three years from the delivery of the articles: Provided further, that whenever by the aforesaid proviso the time of proving a book account in manner aforesaid is enlarged as to the one party, to the same extent shall be enlarged the time as to the other party.—Rev., 1623.

2187. Copies of book accounts evidence, when.—A copy from the book of accounts proved in manner above directed may be given in evidence in any such action or setoff as aforesaid, and shall be as available as if such book had been produced, unless the party opposing such proof shall give notice to the adverse party or his attorney, at the

joining of the issue, or ten days before the trial, that he will require the book to be produced at the trial; and in that case no such copy shall be admitted as evidence.—Rev., 1624.

2188. Itemized accounts evidence, when.—In any actions instituted in any court of this state upon an account for goods sold and delivered, a verified itemized statement of such account shall be received in evidence, and shall be deemed prima facie evidence of its correctness.—Rev., 1625.

7. Life Tables.

2189. Mortuary tables evidence.—Whenever it shall be necessary to establish the expectancy of continued life of any person from any period of such person's life, whether he be living at the time or not, the table hereto appended shall be received in all courts and by all persons having power to determine litigation as evidence, with other evidence as to the health, constitution and habits of such person, of such expectancy represented by the figures in the columns headed by the words "completed age" and "expectation" respectively:

Completed Age.	Expectation.	Completed Age.	Expectation.
10	43.7	53	18.8
11	48.1	54	18.1
12	47.4	55	17.4
13	46.8	56	16.7
14	46.2	57	16.1
15	45.5	58	15.4
16	44.9	59	14.7
17	44.2	60	14.1
18	43.5	61	13.5
19	42.9	62	12.9
20	42.2	63	12.3
21	41.5	64	11.7
22	40.9	65	11.1
23	40.2	66	10.5
24	39.5	67	10.0
25	38.8	68	9.5
26	38.1	69	9.0
27	37.4	70	8.5
28	36.7	71	8.0
29	36.0	72	7.6
30	35.3	73	7.1
31	34.6	74	6.7
32	33.9	75	6.3
33	33.2	76	5.9
34	32.5	77	5.5
35	31.8	78	5.1
36	31.1	79	4.8
37	30.4	80	4.4
38	29.6	81	4.1
39	28.9	82	3.7
40	28.2	83	3.4
41	27.5	84	3.1
42	26.7	85	2.8
43	26.0	86	2.5
44	25.3	87	2.2
45	24.5	88	1.9
46	23.8	89	1.7
47	23.1	90	1.4
48	22.4	91	1.2
49	21.6	92	1.0
50	20.9	93	.8
51	20.2	94	.6
52	19.5	95	.5

2190. Present worth of annuities.—Whenever it shall be necessary to establish the present worth or cash value of an annuity to a person, payable annually during his life, such present worth or cash value may be ascertained by the use of the following table in connection with the mortuary tables established by law, the first column representing the number of years the annuity is to run and the second column representing the present cash value of an annuity of one dollar for such number of years, respectively:

No. of Years Annuity is to Run.	Cash Value of the Annuity of \$1 00.	No. of Years Annuity is to Run.	Cash Value of the Annuity of \$1.00
1	\$0.943	26	\$13.003
2	1.833	27	13.211
3	\$0.943	28	13.406
4	3.465	29	13.591
5	4.212	30	13.765
6	4.917	31	13.929
7	5.582	32	14.084
8	6.209	33	14.230
9	6.801	34	14.368
10	7.360	35	14.498
11	7.886	36	14.621
12	8.383	37	14.737
13	8.852	38	14.846
14	9.295	39	14.949
15	9.712	40	15.046
16	10.106	41	15.135
17	10.477	42	15.219
18	10.827	43	15.299
19	11.158	44	15.374
20	11.469	45	15.445
21	11.764	46	15.514
22	12.042	47	15.579
23	12.304	48	15.641
24	12.550	49	15.699
25	12.783	50	15.754

The present cash value of the annuity for a fraction of a year may be ascertained as follows: Multiply the difference between the cash value of the annuities for the preceding and succeeding full years by the fraction of the year in decimals and add the sum to the present cash value for the preceding full year. When a person is entitled to the use of a sum of money for life, or for a given time, the interest thereon for one year may be considered as an annuity and the present cash value be ascertained as herein provided.—Rev., 1627.

8. Competency of Witnesses.

2191. Not incapacitated by interest or crime.—No person offered as a witness shall be excluded by reason of incapacity from interest or crime, from giving evidence either in person or by deposition, according to the practice of the court, on the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit or proceeding, civil or criminal, in any court, or before any judge, justice, jury or other person having, by law, authority to hear, receive and examine evidence; and every person so offered shall be admitted to give evidence, notwithstanding such person may or shall have an interest in the matter in question, or in the event of the trial of the issue, or of the suit or other proceeding in which he is offered as a witness. This section shall not be construed to apply to attesting witnesses to wills.—Rev., 1628.

2192. Not excluded by interest.—No person offered as a witness shall be excluded by reason of his interest in the event of the action.—Rev., 1629.

2193. Evidence of parties admissible; exceptions.—On the trial of any issue, or of any matter or question, or on any inquiry arising in any action, suit or other proceeding in court, or before any judge, justice, jury or other person having, by law, authority to hear and examine evidence, the parties themselves and the person in whose behalf any suit or other proceeding may be brought or defended, shall, except as hereinafter provided, be competent and compellable to give evidence, either *viva voce*, or by deposition, according to the practice of the court, in behalf of either or any of the parties to said action, suit or other proceeding. Nothing in this section shall be construed to apply to any action or other proceeding in any court instituted in consequence of adultery, or to any action for criminal conversation.—Rev., 1630.

2194. When one party to transaction is dead.—Upon the trial of an action, or the hearing upon the merits of a special proceeding, a party or a person interested in the event, or a person from, through or under whom such a party or interested person derives his interest or title by assignment or otherwise, shall not be examined as a witness in his own behalf or interest, or in behalf of the party succeeding to his title or interest against the executor, administrator or survivor of a deceased person, or the committee of a lunatic, or a person deriving his title or interest from, through or under a deceased person or lunatic, by assignment or otherwise, concerning a personal transaction or communication between the witness and the deceased person or lunatic; except where the executor, administrator, survivor, committee or person so deriving the title or interest is examined in his own behalf, or the testimony of the lunatic or deceased person is given in evidence concerning the same transaction or communication.—Rev., 1631.

2195. Executors may testify as to estate in their hands, when; proviso.—In all actions now pending or which may be hereafter instituted upon judgments rendered before the first day of August, one thousand eight hundred and sixty-eight, or upon any bond or promissory note under seal executed prior to said date, wherein a reference has been or may be ordered by the court to ascertain the conditions or state of the assets belonging to the estate of any deceased debtor in the hands of his administrator or executor, who is or may be defendant in such actions, it shall be competent for the defendant administrator or executor of such deceased debtor to testify and be examined as a witness in his own behalf concerning his administration upon the estate of his intestate or decedent. When in such cases the defendant administrator or executor shall have testified or been examined as a witness in his own behalf, it shall also be competent for the plaintiff to testify and be examined in the same in regard to such administration.—Rev., 1632.

2196. Party not competent, when.—No person who is or shall be a party to an action founded on a judgment rendered before the first day of August, one thousand eight hundred and sixty-eight, or on any bond executed prior to said date, or the assignor, endorser or any person who has at the time of the trial, or ever has had any interest in such judgment or bond, shall be a competent witness on the trial of such action, but this section shall not apply to the trial of any action commenced before the first day of August, one thousand eight hundred and sixty-eight, nor to the trial of any action in which the defendant therein relies upon the plea of payment in fact, or pleads a counterclaim and also introduces himself as a witness to establish the truth

of such plea, but in all such cases the rules of evidence as contained in this Revisal shall prevail.—Rev., 1633.

2197. Defendant competent in criminal actions; husband or wife competent for defendant.—In the trial of all indictments, complaints or other proceedings against persons charged with the commission of crimes, offenses and misdemeanors, the person so charged shall at his own request, but not otherwise, be a competent witness, and his failure to make such request shall not create any presumption against him. The husband, or wife of the defendant, in all criminal actions or proceedings, shall be a competent witness for the defendant; but the failure of such witness to be examined shall not be used to the prejudice of the defense. But every such person examined as a witness shall be subject to be cross-examined as are other witnesses.—Rev., 1634.

Confessions of a prisoner before a justice, when not reduced to writing, may be proved by parol.—State v. Irwin, 2—112.

2198. Defendant in criminal actions not compellable to give evidence against himself; nor husband or wife against the other.—Nothing in this chapter, except as provided in the preceding section, shall render any person, who in any criminal proceeding is charged with the commission of a criminal offense competent, or compellable, to give evidence against himself, nor shall render any person compellable to answer any question tending to criminate himself, nor shall in any criminal proceeding render any husband competent or compellable to give evidence against his wife, nor any wife competent or compellable to give evidence against her husband: Provided, that in all criminal prosecutions of a husband for an assault and battery upon the person of his wife, or for abandoning his wife, or for neglecting to provide for her support, it shall be lawful to examine the wife in behalf of the state against the said husband.—Rev., 1635.

2199. Husband and wife witnesses.—In any trial or inquiry in any suit, action or proceeding in any court, or before any person having, by law or consent of parties, authority to examine witnesses or hear evidence, the husband or wife of any party thereto, or of any person in whose behalf any such suit, action or proceeding is brought, prosecuted, opposed or defended, shall, except as herein stated, be competent and compellable to give evidence, as any other witness on behalf of any party to such suit, action or proceeding. Nothing herein shall render any husband or wife competent or compellable to give evidence for or against the other, in any criminal action, or proceeding (except to prove the fact of marriage in case of bigamy), or in any action or proceeding in consequence of adultery, or in any action or proceeding for divorce on account of adultery (except to prove the fact of marriage), or in any action or proceeding for or on account of criminal conversation. No husband or wife shall be compellable to disclose any confidential communication made by one to the other during their marriage.—Rev., 1636.

2200. Persons testifying in gambling not prosecuted.—No person shall be excused, on any prosecution, from testifying touching any unlawful gaming done by himself or others; but no discovery, made by the witness upon such examination, shall be used against him, in any penal or criminal prosecution, and he shall be altogether pardoned of the offense so done, or participated in by him.—Rev. 1637.

Note.—See s. 1688 of Revisal.

2201 Lynching, witness must testify; pardoned.—In all investigations before a justice of the peace, coroner, judge, grand jury, or courts and jury, on the trial of a cause for lynching, no person shall be excused from testifying touching his knowledge or information in regard to the offense being investigated, upon the ground that his an-

swer might tend to subject him to prosecution, pains or penalties, or that his evidence might tend to criminate himself, but no discovery made by such witness upon any such examination shall be used against him in any court or in any penal or criminal prosecution, and he shall when so examined as a witness for the state be altogether pardoned of any and all participation in any crime of lynching concerning which he is required to testify.—Rev., 1638.

Note.—Evidence as to bawdy houses, see Laws 1907, cc. 779, 1012.

9. Attendance of Witnesses.

2202. How procured.—In obtaining the testimony of witnesses in causes depending in the superior, criminal and inferior courts, the following rules shall be observed in practice, to-wit:

In suits where witnesses are to appear at any court, the clerk at the instance of a party shall issue a subpoena, directed to the sheriff or other officer of the county where such witnesses reside, naming the time and place for their appearance, the names of the parties to the suit wherein the testimony is to be given, and the party at whose instance they are summoned. Every subpoena made returnable immediately, shall be issued only in term time, and shall be personally served on the witness therein named. A copy of every subpoena issued by the clerk in vacation, in case any witness therein named is not to be found, may be left at his usual place of residence; and such copy certified by the sheriff or other officer, and left as aforesaid, shall be deemed a legal summons, and the person therein named shall be bound to appear in the same manner as if personally summoned.—Rev., 1639.

Note.—For subpoena issued by party or attorney, see s. 884 of Revisal.

2203. How procured before jury of view, referee or commissioners.—In all cases not otherwise provided for, when witnesses are required to attend any court, commission, referee, order of survey, or jury of view, a summons shall be issued by the clerk of the court, at the request of either party, naming the day and place when and where they are to appear, the names of the parties to the suit, and in whose behalf summoned.—Rev., 1640.

2204. When subpoena duces tecum may issue.—In all causes depending in any court, in which the production of an original paper, lodged in any of the public offices of the state, or in any office of any court, shall become necessary, the court may issue the process of subpoena duces tecum, requiring such persons who hold said offices to attend the court with such original paper, in like manner and under the same penalties as witnesses are required in cases of subpoena to testify.—Rev., 1641.

2205. Cause removed, subpoenas and commissions to take depositions issued from either county.—When any cause shall be removed from the superior court of one county to that of another, after the order of removal, depositions may be taken in the cause, and subpoenas for the attendance of witnesses and commissions to take depositions may issue from either of the said courts, under the same rules as if the cause had been originally commenced in the court from which the subpoenas or commissions issued.—Rev., 1642.

2206. Witness to attend until discharged; penalty nonattendance, how paid; judgment nisi only.—Every witness, being summoned to appear in any of the said courts, in manner before directed, shall appear accordingly, and continue to attend from term to term until discharged, when summoned in a civil action or special proceeding, by the court or the party at whose instance such witness shall be summoned, or when summoned in a criminal prosecution, until discharged by the

court, the prosecuting officer, or the party at whose instance he was summoned; and in default thereof shall forfeit and pay, in civil actions or special proceedings, to the party at whose instance the subpoena issued, the sum of forty dollars, to be recovered by motion in the cause, and shall be further liable to his action for the full damages which may be sustained for the want of such witness's testimony; or if summoned in a criminal prosecution shall forfeit and pay eighty dollars for the use of the state, or the party summoning him: Provided, that if the civil action or special proceeding shall, in the vacation, be compromised and settled between the parties, and the party at whose instance such witness was summoned should omit to discharge him from further attendance, and for want of such discharge, he shall attend the next term, in that case the witness, upon oath made of the facts, shall be entitled to a ticket from the clerk in the same manner as other witnesses, and shall recover from the party, at whose instance he was summoned, the allowance which is given to witnesses for their attendance, with costs: Provided further, that no execution shall issue against any defaulting witness for the forfeiture aforesaid, but after notice made known to him to show cause against the issuing thereof; and if sufficient cause be shown of his incapacity to attend, execution shall not issue, and the witness shall be discharged of the forfeiture without costs; but otherwise the court shall, on motion, award execution for the forfeiture against the defaulting witness.—Rev., 1643.

2207. Not arrested in civil cases while attending court.—Every witness shall be exempt from arrest in civil actions or special proceedings during his attendance at any court, or before a commissioner, arbitrator, referee or other person authorized to command the attendance of such witness, and during the time such witness is going to and returning from the place of such attendance, allowing one day for every thirty miles such witness has to travel to and from his place of residence.—Rev., 1644.

10. Depositions.

2208. What may be read on the trial.—Every deposition taken and returned as prescribed in section one thousand six hundred and fifty-two may be read on the trial of the action or proceeding, or before any referee, in the following cases, and not otherwise:

1. If the witness is dead, or has become insane since the deposition was taken.
2. If the witness is the resident of a foreign country, or of another state, and is not present at the trial.
3. If the witness is confined in a prison outside the county in which the trial takes place.
4. If the witness is so old, sick or infirm as to be unable to attend court.
5. If the witness is the president of the United States, or the head of any department of the federal government, or a judge, district attorney, or clerk of any court of the United States, and the trial shall take place during the term of such court.
6. If the witness is the governor of the state, or the head of any department of the state government, or the president of the university, or the head of any other incorporated college in the state, or the superintendent or any physician in the employ of any of the hospitals for the insane of the state.
7. If the witness is a justice of the supreme court, or a judge, presiding officer, clerk or solicitor of any court of record, and the trial shall take place during the term of such court.
8. If the witness is a member of the congress of the United States,

or a member of the general assembly, and the trial shall take place during a session of the body of which he is a member.

9. If the witness has been duly summoned, and at the time of the trial, is out of the state, or is more than seventy-five miles by the usual public mode of travel from the place where the court is sitting, without the procurement or consent of the party offering his deposition.—Rev., 1645.

Note.—In quo warranto, read when, see s. 2217 infra.

2209.—In justices' courts.—Any party in a civil action before a justice of the peace may take the depositions of all persons whose evidence he may desire to use in the action; and to do so, he may apply to the clerk of the superior court for a commission to take the same, and shall proceed in all things in taking such depositions as if such action was pending in the superior court. When any such depositions are returned to the clerk, they shall be opened and passed upon by the clerk, and delivered to the justice of the peace, before whom the trial is to be had; and the reading and using of said depositions shall conform to the rules of the superior court.—Rev., 1646.

2210. Not quashed after trial begun.—No deposition shall be quashed, or rejected, on objection first made after trial has begun, merely because of an irregularity in taking the same, provided it shall appear that the party objecting had notice that it had been taken, and it was on file long enough before the trial to enable him to present his objection.—Rev., 1647.

2211. Objection taken before trial.—At any time before the trial, or hearing of an action or proceeding, any party may make a motion to the judge or court to reject a deposition for irregularity in the taking of it, either in whole or in part, for scandal, impertinence, the incompetency of the testimony, for insufficient notice, or for any other good cause. The objecting party shall state his exceptions in writing.—Rev., 1648.

2212. Commissioners may subpoena witness and punish for contempt.—Commissioners to take depositions appointed by the courts of this state, or by the courts of the states or territories of the United States, arbitrators, referees, and all persons acting under a commission issuing from any court of record in this state, are hereby empowered, they or the clerks of the courts respectively in this state, to which such commission shall be returnable, to issue subpoenas, specifying the time and place for the attendance of witnesses before them, and to administer oaths to said witnesses, to the end that they may give their testimony. And any witness, appearing before any of the said persons, and refusing to give his testimony on oath touching such matters as he may be lawfully examined unto, shall be committed, by warrant of the person before whom he shall so refuse, to the common jail of the county, there to remain until he may be willing to give his evidence; which warrant of commitment shall recite what authority the person has to take the testimony of such witness, and the refusal of the witness to give it.—Rev., 1649.

2213. Attendance before commissioner, how enforced.—The sheriff of the county where the witness may be, shall execute all such subpoenas, and make due return thereof before the commissioner, or other person, before whom the witness is to appear, in the same manner, and under the same penalties, as in case of process of a like kind returnable to court; and when the witness shall be subpoenaed five days before the time of his required attendance, and shall fail to appear according to the subpoena and give evidence, the default shall be noted by the commissioner, arbitrator, or other person aforesaid; and in case the default be made before a commissioner acting under

authority from courts without the state, the defaulting witness shall forfeit and pay to the party at whose instance he may be subpoenaed fifty dollars, and on the trial for such penalty, the subpoena issued by the commissioner, or other person, as aforesaid, with the indorsement thereon of due service by the officer serving the same, together with the default noted as aforesaid and indorsed on the subpoena, shall be prima facie evidence of the forfeiture, and sufficient to entitle the plaintiff to judgment for the same, unless the witness may show his incapacity to have attended.—Rev., 1650.

2214. Remedies against defaulting witness before commissioner.—But in case the default be made before a commissioner, arbitrator, referee or other person, acting under a commission or authority from any of the courts of this state, then the same shall be certified under his hand, and returned with the subpoena to the court by which he was commissioned or empowered to take the evidence of such witness; and thereupon the court shall adjudge the defaulting witness to pay to the party at whose instance he was summoned, the sum of forty dollars; but execution shall not issue therefor until the same be ordered by the court, after such proceedings had as shall give said witness an opportunity to show cause, if he can, against the issuing thereof.—Rev., 1651.

2215. How taken. Any party in a civil action or special proceeding may take the depositions of persons whose evidence he may desire to use, without any special order therefor, unless the witness shall be beyond the limits of the United States. Written notice of the time and place of taking a deposition, specifying the name of the witness, must be served by the party at whose instance it is taken upon the adverse party or his attorney. The time for serving such notice shall be as follows: Three entire days when the party notified resides within ten miles of the place where the deposition is to be taken; in other cases, where the party notified resides in the state, one day more for every additional twenty miles, except where the deposition is to be taken within ten miles of a railway in running operation in the state, when one day only shall be given for every hundred miles of railway to the place where the deposition is to be taken. When a deposition is to be taken beyond the state, ten days' notice of the taking thereof shall be given, when the party whose deposition is to be taken resides within ten miles of a railway connecting with a line of railway within twenty miles of the place where the person notified resides. In other cases, where there are no railways running as above specified, twenty days' notice shall be given. When objection is taken to the reading of any such deposition, upon the ground that there are no railways or connecting railways to and from the points specified in this section, or that the notice given had otherwise been actually insufficient, it shall devolve upon the party objecting to satisfy the court of the truth of his allegation. Depositions shall be taken on commission, issuing from the court and under the seal thereof, by one or more commissioners, who shall be of kin to neither party, and shall be appointed by the clerk. Depositions shall be subscribed and sealed up by the commissioners, and returned to the court, the clerk whereof or the judge holding the court, if the clerk is a party to the action, shall open and pass upon the same, after having first given the parties or their attorneys not less than one day's notice; and all such depositions, when passed upon and allowed by the clerk, without appeal, or by the judge upon appeal from the clerk's order, or by the judge holding the court, when the clerk is a party to the action, shall be deemed legal evidence, if the witness be competent. In all criminal actions pending before the superior court it shall be lawful for the defendant in any such action to make affidavit before the clerk of

the superior court in which said action is pending that it is important for the defense that he have the testimony of any person or persons, whose names must be given, and that such person or persons are so infirm, or otherwise physically incapacitated, or nonresident of this state, that he can not procure their attendance at court. Upon the filing of said affidavit it shall be the duty of the clerk to appoint some responsible person to take the deposition of said person, which deposition may be read in the trial of said criminal action under the same rules as now apply by law to depositions in civil actions: Provided, that the solicitor of the district in which said suit is pending have ten days' notice of the taking of said deposition, who may appear in person or by a representative to conduct the cross-examination of such witness.—Rev., 1652.

A deposition which does not state, either in its caption or body, between what parties it was taken, can not be read.—Marsh v. Marsh, 3—290.

2216. How taken in hearings before municipal authorities.—Any board of aldermen, board of town or county commissioners or any person interested in any proceeding, investigation, hearing or trial before such board, may take the depositions of all persons whose evidence may be desired for use in said proceeding, investigation, hearing or trial; and to do so, the chairman of such board or such person may apply in person or by attorney to the superior court clerk of that county in which such proceeding, investigation, hearing or trial is pending for a commission to take the same, and said clerk, upon such application, shall issue such commission; and the notice and proceedings upon the taking of said depositions shall be the same as provided for in civil actions; and if the person upon whom the notice of the taking of such deposition is to be served is absent from or can not after due diligence be found within this state, but can be found within the county in which the deposition is to be taken, then, and in that case, said notice shall be personally served on such person by the commissioner appointed to take such deposition; and when any such deposition is returned to the clerk it shall be opened and passed upon by him and delivered to such board, and the reading and using of such deposition shall conform to the rules of the superior court.—Rev., 1653.

2217. In quo warranto proceedings, how taken.—In all cases now pending or hereafter to be brought in any county of this state for the purpose of trying the title to the office of clerk of the superior court, register of deeds, county treasurer or sheriff of any county, it shall be competent and lawful to take the deposition of witnesses before a commissioner or commissioners to be appointed by the judge of the district wherein the case is to be tried, or the judge holding the court of said district, or the clerk of the court wherein the case is pending, under the same rules as to time of notice and as to the manner of taking and filing the same as is now provided by law for the taking of depositions in other cases; and such depositions, when so taken, shall be competent to be read on the trial of such action, without regard to the place of residence of such witness or distance of residence from said place of trial: Provided, that the provisions of this section shall not be construed to prevent the oral examination of such witnesses by either party on the trial as they may summon in their behalf.—Rev., 1654.

2218. Taken in the state, action in another state.—In addition to the other remedies prescribed by law, a party to an action, suit or special proceeding, civil or criminal, pending in a court without the state, either in the United States or any of the possessions thereof, or any foreign country, may obtain by the proceedings prescribed by this section, the testimony of a witness and in connection therewith the production of books and papers within the state to be used in

the action, suit or special proceedings. Where a commission to take testimony within the state has been issued from the court in which the action, suit or special proceeding is pending, or where a notice has been given, or any other proceeding has been taken, for the purpose of taking the testimony within the state pursuant to the laws of the state or country wherein the court is located or pursuant to the laws of the United States or any of the possessions thereof, if it is a court of the United States, any justice of the supreme court or judge of the superior court shall, in a proper case, on the presentation of a verified petition, issue a subpoena to the witness, commanding him to appear before the commissioner named in the commission, or before a commissioner within the state, for the state, territory or foreign country in which the notice was given or the proceeding taken, or before the officer designated in the commission, notice or other paper by his title or office, at a time and place specified in the subpoena, to testify in the action, suit or special proceeding. If the witness shall fail to obey the subpoena, or refuse to have an oath administered, or to testify or to produce a book or paper pursuant to a subpoena, or to subscribe his deposition, the justice or judge issuing the subpoena shall, if it is determined that a contempt has been committed, prescribe punishment as in case of a recalcitrant witness. The petition prescribed by this section must state generally the nature of the action or proceeding in which the testimony is sought to be taken, and that the testimony of the witness is material to the issue presented in such action or proceeding, and shall set forth the substance of or have annexed thereto a copy of the commission, order, notice, consent or other authority under which the deposition is taken. In case of an application for a subpoena to compel the production of books or papers, the petition shall specify the particular books or papers, the production of which is sought, and show that such books or papers are in the possession of or under control of the witness and are material upon the issues presented in the action or special proceeding in which the deposition of the witness is sought to be taken. Unless the justice or judge is satisfied that the application is made in good faith to obtain testimony within the provisions of this section, he shall deny the application. Where the subpoena directs the production of books or papers, it shall specify the particular books or papers to be produced, and shall specify whether the witness is required to deliver sworn copies of such books or papers to the commissioner or to produce the original thereof for inspection, but the said books and original papers shall not be taken from the witness. This subpoena must be served upon the witness at least two days, or, in case of a subpoena requiring the production of books or papers, at least five days before the day on which the witness shall be commanded to appear. A party to an action or proceeding in which a deposition is sought to be taken, or a witness subpoenaed to attend and give his testimony, may apply to the court issuing said subpoena to vacate or modify such subpoena. Upon proof by affidavit that a person to whom a subpoena was issued has failed or refused to obey such subpoena, to be duly sworn or affirmed, to testify or answer a question or questions propounded to him, to produce a book or paper which he has been subpoenaed to produce, or to subscribe to his deposition when correctly taken down, the said justice or judge shall grant an order requiring such person to show cause before him, at a time and place specified, why he should not appear, be sworn or affirmed, testify, answer a question or questions propounded, produce a book or paper, or subscribe to the deposition, as the case may be. Such affidavit shall also set forth the nature of the action or special proceeding in which the testimony is sought to be taken, and a copy of the pleadings or other papers defining the issues

in such action or special proceeding, or the facts to be proved therein. Upon the return of such order to show cause, the said justice or judge, as the case may be, shall, upon such affidavit and upon the original petition and upon such other facts as shall appear, determine whether such persons should be required to appear, be sworn or affirmed, testify, answer the question or questions propounded, produce the books or papers, or subscribe to his deposition, as the case may be, and may prescribe such terms and conditions as shall seem proper. Upon proof of a failure or refusal on the part of any person to comply with any order of the court made upon such determination, the justice or judge, as the case may be, shall make an order requiring such person to show cause before him, at a time and place therein specified, why such person should not be punished for the offense as for a contempt. Upon the return of the order to show cause, the questions which arise must be determined as upon a motion. If such failure or refusal is established to the satisfaction of the justice or judge before whom the order to show cause is made returnable, the justice or judge, as the case may be, shall enforce the order and prescribe the punishment as hereinbefore provided. The commissioner herein provided for shall not proceed to act under and by virtue of his appointment until the party seeking to obtain such deposition has deposited with him a sufficient sum of money to cover all costs and charges incident to the taking of the deposition, including such witness fees as are allowed to witnesses in this state for attendance upon the superior courts, and from such deposit said commissioner shall retain whatever amount may be due him for services, pay such witness fees and other costs that may have been incurred by reason of taking such deposition, and if any balance remains in his hands he shall pay the same to the party by whom it was advanced.—Rev., 1655.

11. Writings, Production, Inspection.

2219. Inspection before trial.—The court before which an action is pending, or a judge thereof, may, in their discretion, and upon due notice, order either party to give to the other, within a specified time, an inspection and copy, or permission to take a copy, of any books, papers, and documents in his possession or under his control, containing evidence relating to the merits of the action or the defense therein. If compliance with the order be refused, the court, on motion, may exclude the paper from being given in evidence, or punish the party refusing, or both.—Rev., 1656.

2220. Production on trial.—The courts shall have full power, on motion and due notice thereof, given, to require the parties to produce books or writings in their possession or control which contain evidence pertinent to the issue, and if a plaintiff shall fail to comply with such order, and shall not satisfactorily account for his failure, the court, on motion, may give the like judgment for the defendant, as in cases of nonsuit; and if a defendant shall fail to comply with such order, and shall not satisfactorily account for his failure, the court, on motion as aforesaid, may give judgment against him by default.—Rev., 1657.

2221. Admission of genuineness procured.—Either party may exhibit to the other, or to his attorney at any time before the trial, any paper material to the action, and request an admission in writing of its genuineness. If the adverse party, or his attorney, fail to give the admission within four days after the request, and if the party exhibiting the paper be afterwards put to expense in order to prove its genuineness, and the same be finally proved or admitted on the trial, such expense, to be ascertained at the trial, shall be paid by the party refusing the admission, unless it appear to the satisfaction of the court that there were good reasons for the refusal.—Rev., 1658.

12. Confederate Currency.

2222. Scale of depreciation.—Contracts solvable in Confederate currency may be discharged according to the following scale of depreciation of Confederate currency, the gold dollar being the unit and measure of value, from November first, one thousand eight hundred and sixty-one, to May first, one thousand eight hundred and sixty-five:

Months.	1861.	1862.	1863.	1864.	1865.
January	\$.....	\$ 1.20	\$ 3.00	\$21.00	\$ 50.00
February		1.30	3.00	21.00	50.00
March.....		1.50	4.00	23.00	60.00
April.....		1.50	5.00	20.00	100.00
May		1.50	5.50	19.00	
June		1.50	6.50	18.00	
July.....		1.50	9.00	21.00	
August.....		1.50	14.00	23.00	
September.....		2.00	14.00	25.00	
October		2.00	14.00	26.00	
November.....	1.10	2.50	15.00	30.00	
December	1.15	2.50	20.00		
“ 1st to 10th, inclusive..				35.00	
“ 10th to 20th, inclusive..				42.00	
“ 20th to 30th, inclusive..				49.00	

This scale applies to the time of contracting and not to the times said debts become due.—Rev., 1659.

Note.—For evidence in indictment for enticing minors from state, see s. 3630 of Revisal.

For evidence in cases of hunting by night, see s. 3462 of Revisal.

For evidence necessary in cases of disposing of mortgaged property, see s. 3435 of Revisal.

For evidence in indictments for secreting seamen, see s. 3557 of Revisal.

For students as witnesses against lewd women, see s. 3353 of Revisal.

For evidence to convict of seduction, see s. 3354 of Revisal.

For what necessary to allege and prove in prosecutions for selling seed cotton, see s. 3812 of Revisal.

For evidence in prosecution for selling liquor in local option territory, see s. 2060 of Revisal.

For evidence in cases of gaming, see Gaming Contracts.

For evidence in suits against sureties on official bonds, see Bonds.

For recitals in tax deeds as evidence, see s. 2909 of Revisal.

See Burnt and Lost Records.

For proof of loss of baggage, see Innkeepers, s. 1914 of Revisal.

For certified copies of judgments as evidence, see s. 569 of Revisal.

See Commissioners of Affidavits.

Vouchers evidence of payment by administrator, see Administration, s. 101 of Revisal.

For evidence against principal as against surety, see s. 285 of Revisal.

CHAPTER XXX.

FENCES AND STOCK LAW.

1. Lawful Fences.

2223. Fences to be five feet high.—Every planter shall make a sufficient fence about his cleared ground under cultivation, at least five feet high, unless otherwise provided in this chapter, unless there shall be some navigable stream or deep water-course that shall be sufficient, instead of such fence, and unless his lands shall be situated within the limits of a county, township or district wherein the stock law may be in force.—Rev., 1660.

2224. Four and a half feet in certain counties.—A fence four and one-half feet high shall be a lawful fence in the counties of Cumberland, Currituck, Cherokee, Burke, Rutherford, Yancey, Wilkes, Caldwell, Duplin, Jackson,, Alleghany, Davidson, Harnett, Henderson, Wake, Craven, Richmond, Davie, Bladen, Northampton, Washington, Randolph, Robeson, Tyrrell, Brunswick and Lenoir: Provided, this section shall not apply to stock law fences.—Rev., 1661.

2225. Four feet in certain counties.—A fence four feet high shall be a lawful fence in the counties of Carteret, Pamlico, Hyde, New Hanover, Buncombe, Madison and McDowell.—Rev., 1662.

2226. Water-courses, on application to commissioners, made.—Any five electors, residents of the same county, may apply to the board of commissioners of the county, at any regular meeting of the same, by written petition praying that any water-course, or any part of any water-course, in the county, may be made a lawful fence. Notice of such petition shall be posted forty days at the courthouse door, by the clerk of the board before such petition shall be acted upon. Upon the hearing of such petition, the board of county commissioners is authorized to declare any water-course, or any part of any water-course to which the petition applies, a lawful fence. And the several acts of the general assembly, declaring certain water-courses, in part or in whole, lawful fences, are so far repealed as to enable the board of commissioners of any county to declare any of such acts, or parts thereof, to be null and void in said county. Any order made under this section shall be of record and signed by the chairman, and may be rescinded by the board of commissioners at any regular meeting.—Rev., 1663.

2. Joint Fences.

2227. Jointly maintained.—Where two or more persons shall have lands adjoining, which shall be either cultivated or used as a pasture for stock, the respective owners of each piece of land shall make and maintain one-half of the fence upon the dividing line.—Rev., 1664.

2228. Jointly paid for, when.—Where the owner of one piece of land shall have chosen neither to cultivate his land, nor to pasture, nor to permit his stock to run on it, if he shall afterwards do either, without so enclosing such stock that they can not enter on the lands of such adjoining owner, he shall refund to such owner one-half the value at that time of any fence erected by him on the dividing line.—Rev., 1665.

2229. Value of dividing fence ascertained, how.—The value of such fence shall be ascertained as follows: Either owner may summon the other to appear before any justice of the peace of the township in which the dividing line is situate; or if it be situate in more than one township, then before any justice of the peace of any township in which any part of it is situate. In his summons he shall name a certain day, not less than five days after the summons, for the appearance of the defendant; he shall also state the purpose of the summons to be the adjustment of all matters in controversy respecting the dividing fence between the parties. The justice shall hear the complaint and defence. If the facts found be such as entitle either party to demand contribution of the other, the justice shall call on the complainant to name an indifferent person, qualified to act as a juror of the township, and if the complainant refuses the justice shall name one for him. The justice shall then call on the defendant to name an indifferent person, qualified to act as a juror of the township, and if the defendant refuses the justice shall name one for him. The justice shall then name a third indifferent person. These three persons, or any two of them, shall view the premises and decide all mat-

ters in controversy between the parties, relating to a fence on the dividing line. They shall make a written report to the justice, who shall give judgment thereon, and for the costs, which shall be paid by the owners of the several pieces of land equally. The jurors shall each receive one dollar per day. The fees of the justice and constable shall be as in other cases. Either party may appeal as provided in other cases of justices' judgments.—Rev., 1666.

2230. Jurors to report how fence kept up.—The report of the jurors shall also state the kind of fence which ought to be kept up, and assign to each owner, in such manner as that it may be identified, the part which he shall keep up.—Rev., 1667.

2231. Report registered by register of deeds.—The justice shall return the report, together with a transcript of the proceedings, to the register of deeds of his county for registration. The justice shall collect from the parties the fees of the register, and pay the same to him.—Rev., 1668.

2232. Final judgment binding.—The final judgment upon the report of the jurors shall be binding on the owners of the respective lands and their assigns, so long as such ownership shall continue, or until the same shall be set aside, modified and reversed.—Rev., 1669.

2233. Remedy against delinquent owner.—If any person who is liable to build or keep up a part of any division fence, shall fail at any time to do so, the owner of the adjoining land, after notice, may build or repair the whole, and recover of the delinquent one-half of the cost before any court having jurisdiction.—Rev., 1670.

2234. How removed.—If any owner of land liable to contribute for the keeping up of a division fence, shall determine neither to cultivate his land nor permit his stock to run thereon, he may give the adjoining owner three months' notice of his determination; and in that case, at any time after the expiration of such notice, and between the first day of January and the first day of March, but at no other time, he may remove the half of the fence kept up by himself, and shall be no longer liable to keep up the same.—Rev., 1671.

Note.—Removal of joint fence a misdemeanor, see s. 3412 of Revisal.

3. Stock Law.

2235. County elections.—Upon the written application of one-fifth of the qualified voters of any county made to the board of commissioners thereof, it shall be the duty of said commissioners from time to time to submit the question of "stock law" or "no stock law" to the qualified voters of said county. And if at any such election a majority of the votes cast shall be in favor of said stock law, then the provisions of this chapter relating to the stock law shall be in force over the whole of said county.—Rev., 1672.

2236. Township elections.—Upon the written application of one-fifth of the qualified voters in any township, made to the board of commissioners of the county wherein said township is situated, it shall be the duty of said commissioners to submit the question of "stock law" or "no stock law" to the qualified voters of said township; and if at any such township election a majority of the votes cast shall be in favor of "stock law," then the said stock law shall be in force in said township.—Rev., 1673.

2237. District elections.—Upon the written application of one-fifth of the qualified voters of any district or territory, whether the boundaries of said district follow township lines or not, made to the board of county commissioners at any time, and setting forth well-defined boundaries of said district, it shall be the duty of the said commis-

sioners to submit the question of "stock law" or "no stock law" to the qualified voters of said district, and if at any such election a majority of the votes cast shall be in favor of "stock law," then the said stock law shall be in force over the whole of said district.—Rev., 1674.

Note.—For proviso as to Moore County, see Laws 1907, c. 659.

2238. Persons within territory allowed to withdraw.—Upon the written application of a majority of the qualified voters in any district, territory or well-defined boundary, made to the board of county commissioners, at any time, setting forth that the citizens of said district, territory or boundary are within the stock law boundary, and are desirous of being released from the laws governing said stock law territory, it shall be the duty of said commissioners to submit the question of "no stock law" or "stock law" to the qualified voters of said district or territory, and if at any such election a majority of the votes cast shall be against stock law, then the said district or territory shall be released and free from the operation of the stock law: Provided, the expense incurred in changing the fence in such boundary, district or territory so released be paid by the property holders in such boundary, district or territory, and that the commissioners of the county levy the tax to pay the same on the property holders of such boundary, district or territory so released, but they shall not be further liable for keeping up said stock law fence: Provided, that in any territory where stock law now prevails no election against stock law shall be held in less than two years from the date of the election adopting stock law in said territory: Provided further, that if "no stock law" should carry, it shall not take effect until six months from the date of its ratification: Provided still further, that neither "stock law" or "no stock law" shall take effect during crop season. This section shall apply only to the counties of Jackson, Graham, Swain, Clay, Macon, Cherokee and Randolph.—Rev., 1675.

2239. Elections, how held.—Every election under this chapter shall be held and conducted under the same rules and regulations and according to the same penalties provided by law for the election of members of the general assembly: Provided, no such county, township or district election shall be held oftener than once in any one year, although the boundaries of such district may not be the same.—Rev., 1676.

2240. Powers and duties of commissioners.—The board of commissioners of the county may provide for a new registration of voters, designate places for holding elections, and make all regulations, and do all other things necessary to carry into effect the provisions of this chapter relating to the stock law.—Rev., 1677.

2241. Land adjoining stock law territory.—Any person, or any number of persons, owning land in a county, district or township, which shall not adopt the stock law, or adjoining any county, township or district where a stock law prevails, may have his or their lands enclosed within any fence built in pursuance of this chapter. All such adjacent lands, when so enclosed, shall be subject to all the provisions of law with respect to live stock running at large within the original district so enclosed, as if it were a part of the township, county or district with which it is hereby authorized to be enclosed. Any number of landowners, whose lands are contiguous, may at any time build a common fence around all their lands, with gates across all public highways; and no live stock shall run at large within any such enclosure, under the pains and penalties prescribed in this chapter.—Rev., 1678.

Note.—See Crimes, s. 3319 of Revisal.

2242. Stock not to run at large, impounded.—Any person may take up any live stock running at large within any township or district wherein the stock law shall be in force and impound the same; and such impounder may demand fifty cents for each animal so taken up, and twenty-five cents for each animal for every day such stock is kept impounded, and may retain the same, with the right to use it under proper care until all legal charges for impounding said stock and for damages caused by the same are paid, said damages to be ascertained by two disinterested freeholders, to be selected by the owner and said impounder, said freeholders to select an umpire, if they can not agree, and their decision to be final.—Rev., 1679.

2243. Owner notified; sale of stock; application of proceeds.—If the owner of said stock be known to such impounder he shall immediately inform such owner where his stock is impounded, and if said owner shall for two days after such notice wilfully refuse or neglect to redeem his stock, then the impounder, after ten days' written notice posted at three or more public places within the township where said stock is impounded, and describing the said stock and stating place, day and hour of sale, or if the owner be unknown, after twenty days' notice in the same manner, and also at the court-house door, shall sell the stock at public auction, and apply the proceeds in accordance with the preceding and succeeding sections, and the balance he shall turn over to the owner if known; and if the owner be not known, to the county commissioners for the use of the school fund of the district wherein said stock was taken up and impounded, subject in their hands for six months to the call of the legally entitled owner.—Rev., 1680.

2244. Stock defined.—The word "stock" in this chapter shall be construed to mean horses, mules, colts, cows, calves, sheep, goats, jennets, and all neat cattle, swine and geese.—Rev., 1681.

2245. Impounded stock may be fed; pay for same.—In case any animal shall be at any time impounded as aforesaid, and shall continue to be without necessary food and water for more than twelve successive hours, it shall be lawful for any person from time to time, and as often as it shall be necessary, to enter into and upon any such pound or other place, in which any animal shall be so confined, and to supply it with necessary food and water so long as it shall remain so confined. Such person shall not be liable to any action for such entry, and the reasonable cost of such food and water may be collected by him of the owner of such animal.—Rev., 1682.

2246. Fence built around territory.—The stock law authorized by this chapter shall not be enforced until a fence shall have been erected around any territory proposed to be enclosed, with gates on all the public roads passing into and going out of said territory: Provided, all streams which are or may be declared to be lawful fences shall be sufficient boundaries, in lieu of fences: Provided further, no fence shall be erected along the boundary lines of any county, township or district where a stock law prevails.—Rev., 1683.

2247. Lawful fence in stock law territory.—In any county in the state in which or in any portion of which the stock law is now in force or may hereafter be adopted, the county commissioners of said county in their discretion may declare any water-course, mountain, mountain ranges or parts of same, and also other natural and sufficient obstruction along the line of said stock law territory to be and constitute a sufficient stock law fence, and in that event such water-course, mountain, mountain range or part thereof and obstructions so declared by said commissioners shall be and constitute a lawful fence to all intents and purposes.—Rev., 1684.

2248. Fence built by assessment on land owners.—For the purpose of building stock law fences, the board of commissioners of the county may levy and collect a special assessment upon all real property, taxable by the state and county, within the county, township or district which may adopt the stock law, but no such assessment shall be greater than one-fourth of one per centum on the value of said property.—Rev., 1685.

2249. Land condemned.—If the owner of any land shall object to the building of any fence herein allowed, his land, not exceeding twenty feet in width, shall be condemned for the fenceway as land is condemned for railroad purposes under the chapter entitled Railroads.—Rev., 1686.

Note.—Allowing stock to run at large in stock law territory, see s. 3319 of Revisal.

Misapplication of funds by impounder, see s. 3312 of Revisal.

Releasing impounded stock, see ss. 3411, 3310 of Revisal.

Injuring fences and leaving gates open, see ss. 3413, 3411 of Revisal.

Persons living in stock law territory allowing stock to run at large outside said territory, see s. 3322 of Revisal.

Trespassing on lands along roadway, see s. 3321 of Revisal.

Wilful riding or driving on land, see s. 3320 of Revisal.

CHAPTER XXXI.

GAMING CONTRACTS.

2250. Gaming and betting contracts void.—All wagers, bets or stakes made to depend upon any race, or upon any gaming by lot or chance, or upon any lot, chance, casualty or unknown or contingent event whatever, shall be unlawful; and all contracts, judgments, conveyances and assurances for and on account of any money or property, or thing in action, so wagered, bet or staked, or to repay, or to secure any money, or property, or thing in action, lent or advanced for the purpose of such wagering, betting, or staking as aforesaid, shall be void.—Rev., 1687.

2251. Players and betters competent witnesses.—No person shall be excused or incapacitated from confessing or testifying touching any money or property, or thing in action, so wagered, bet or staked, or lent for such purpose, by reason of his having won, played, bet or staked upon any game, lot or chance, casualty, or unknown or contingent event aforesaid; but the confession or testimony of such person shall not be used against him, in any criminal prosecution, on account of such betting, wagering or staking.—Rev., 1688.

Note.—See s. 1637 of the Revisal.

2252. Certain contracts for future delivery void.—Every contract, whether in writing or not, whereby any person shall agree to sell and deliver any cotton, indian corn, wheat, rye, oats, tobacco, meal, lard, bacon, salt pork, salt fish, beef, cattle, sugar, coffee, stocks, bonds, and choses in action, at a place and at a time specified and agreed upon therein, to any other person whether the person to whom such article is so agreed to be sold and delivered shall be a party to such contract or not when, in fact, and notwithstanding the terms expressed of such contract, it is not intended by the parties thereto that the articles or things so agreed to be sold and delivered shall be actually delivered, or the value thereof paid, but it is intended and understood by them that money or other thing of value shall be paid to the one party by the other, or to a third party, the party to whom such payment of money or other thing of value shall be made to depend, and the amount of such money or other thing of value so to be paid to depend upon whether the market price or value of the article so agreed to be sold

and delivered is greater or less at the time and place so specified than the price stipulated to be paid and received for the articles so to be sold and delivered; and every contract commonly called "futures" as to the several articles and things hereinbefore specified, or any of them, by whatever other name called, and every contract as to the said several articles and things, or any of them, whereby the parties thereto contemplate and intend no real transaction as to the article or thing agreed to be delivered, but only the payment of a sum of money or other thing of value, such payment and the amount thereof and the person to whom the same is to be paid to depend on whether or not the market price or value is greater or less than the price so agreed to be paid for the said article or thing at the time and place specified in such contract, shall be utterly null and void; and no action shall be maintained in any court to enforce any such contract, whether the same was made in or out of the state, or partly in and partly out of this state, and whether made by the parties thereto by themselves or by or through their agents, immediately or mediately; nor shall any party to any such contract, or any agent of any such party, directly or remotely connected with any such contract in any way whatever have or maintain any action or cause of action on account of any money or other thing of value paid or advanced or hypothecated by him or them in connection with or on account of such contract and agency. This section shall not be construed so as to apply to any person, firm, corporation or his or their agent engaged in the business of manufacturing or wholesale merchandising in the purchase or sale of the necessary commodities required in the ordinary course of their business.—Rev., 1689.

2253. Procedure and evidence under preceding section.—Proof that anything of value agreed to be sold and delivered was not actually delivered at the time of making the agreement to sell and deliver, and that one of the parties to such agreement deposited or secured, or agreed to deposit or secure, what are commonly called "margins," shall constitute prima facie evidence of a contract declared void by the preceding section.—Rev., 1690.

2254. Invalidity pleaded shifts burden of proof; plea and proof not used in criminal action.—When the defendant in any action pending in any court shall allege specifically in his answer that the cause of action alleged in the complaint is in fact founded upon a contract such as is by this chapter made void, and such answer shall be verified, then the burden shall be upon the plaintiff in such action to prove by the proper evidence, other than any written evidence thereof, that the contract sued upon is a lawful one in its nature and purposes; and the defendant may likewise produce evidence to prove the contrary: Provided, nevertheless, that any allegation or statement of fact made in any pleading in any such action, or the evidence produced on the trial in any such action, shall not be evidence against the party making or producing the same in any criminal action against such party.—Rev., 1691.

Note.—For punishment for dealing in futures, see "Crimes."

CHAPTER XXXII.

GUARDIAN.

I. Public Guardians.

2255. How appointed; tenure.—There may be in every county a public guardian to be appointed by the clerk of the superior court for a term of eight years.—Rev., 1758.

2256. Oath of office.—The public guardian shall take and subscribe an oath (or affirmation) faithfully and honestly to discharge the duties

imposed upon him; the oath so taken and subscribed shall be filed in the office of the clerk of the superior court.—Rev., 1759.

2257. When letters issued to.—The public guardian shall apply for and obtain letters of guardianship in the following cases:

1. When a period of six months has elapsed from the discovery of any property belonging to any minor, idiot, lunatic, insane person or inebriate, without guardian.

2. When any person entitled to letters of guardianship shall request in writing the clerk of the superior court to issue letters to the public guardian: Provided, it shall be lawful and the duty of the clerk of the superior court to revoke said letters of guardianship at any time after issuing the same upon application in writing by any person entitled to qualify as guardian, setting forth a sufficient cause for such revocation.—Rev., 1760.

2258. Powers, duties, liabilities, compensation.—The powers and duties of said public guardian shall be the same as other guardians, and he shall be subject to the same liabilities as other guardians under the existing laws; and shall receive the same compensation as other guardians.—Rev., 1761.

II. Appointed by Parent.

2259. Father, and if dead, mother may appoint.—Any father, though he be a minor, may, by deed executed in his lifetime or by his last will and testament in writing, dispose of the custody and tuition of any of his infant children, being unmarried and whether born at his death or in ventre sa mere, for such time as the children may remain under twenty-one years of age, or for any less time. Or in case such father shall be dead and shall not have exercised his said right of appointment, then the mother, whether of full age or a minor, may do so.—Rev., 1762.

2260. Effect of such appointment.—Every such appointment shall be good and effectual against any person claiming the custody and tuition of such child or children.—Rev., 1763.

2261. Powers and liabilities of other guardians.—Every guardian by deed or will shall have the same powers and rights and be subject to the same liabilities and regulations as other guardians.—Rev., 1764.

2262. Mother natural guardian, father dead.—In case of the death of the father of an infant, the mother of such child surviving such father shall immediately become the natural guardian of such child to the same extent and in the same manner, plight and condition as the father would be if living; and the mother in such case shall have all the powers, rights and privileges, and be subject to all the duties and obligations of a natural guardian. But this shall not be construed as abridging the powers of the courts over minors and their estates and to the appointment of guardians.—Rev., 1765.

3. Jurisdiction of Clerk of Superior Court Over.

2263. May appoint, for infants, idiots, lunatics and inebriates.—The clerks of the superior courts within their respective counties shall have full power, from time to time, to take cognizance of all matters concerning orphans and their estates and to appoint guardians in all cases of infants, idiots, lunatics and inebriates, except where otherwise prescribed by law.—Rev., 1766.

Note.—When wages of apprentice exceed \$100, see Apprentices.

2264. May commit custody to one, estate to another.—Instead of granting general guardianship to one person, the clerk of the superior court may commit the tuition and custody of the person to one and the charge of the estate to another, whenever and at any time during

minority, inebriety, idiocy or lunacy, it appears most conducive to the proper care of the orphan's, inebriate's, idiot's or lunatic's estate, and to his suitable maintenance, nurture and education.—Rev., 1767.

2265. May allow yearly sum for support and education.—In such cases the clerk must order what yearly sums of money or other provisions shall be allowed for the support and education of the orphan, or for the maintenance of the idiot, lunatic or inebriate, and must prescribe the time and manner of paying the same; but such allowance may, upon application and satisfactory proof made, be reduced or enlarged, or otherwise modified, as the ward's condition in life and the kind and value of his estate may require.—Rev., 1768.

2266. What disbursements and commissions allowed.—All payments made by the guardian of the estate to the tutor of the person according to any such order, shall be deemed just disbursements and be allowed in the settlement of his accounts; but for the payment thereof by the one and the receipt thereof by the other merely, no commissions shall be allowed to either, though commissions may be allowed to the tutor of the person on his disbursements only.—Rev., 1769.

Note.—See s. 2305 infra.

A guardian who advances money over and above the income of the estate in order to set his ward up in business or for other purposes, without applying to the court for leave, is not entitled to charge the ward with it.—*Shaw v. Coble*, 68—377.

In passing accounts of a guardian he can not, unless under rare circumstances, be allowed disbursements beyond the income of his ward.—*Caffey v. McMichael*, 64—507.

Should a guardian employ the funds of a ward for his own profit, there is in such case no such skill employed or efforts exerted as should be compensated.—*Burke v. Turner*, 85—500.

A guardian should be allowed reasonable attorney's fees, paid in good faith.—*Ibid*.

A guardian's primary duty is to invest the trust fund, and he will be chargeable with interest, in the absence of proof that it remained in his hands without his fault.—*Wilson v. Lineberger*, 88—416.

2267. Appointed by, in case of divorce.—When parents are divorced and a child is entitled to any estate, the court granting the divorce must certify that fact to the clerk of the superior court, to the end that he may appoint a fit and proper person to take the care and management of such estate, whose powers and duties shall be the same in all respects as other guardians, except that a guardian so appointed shall not have any authority over the person of such child, unless the guardian be the father or mother.—Rev., 1770.

2268. May appoint when father is alive.—The clerk of the superior court may appoint a guardian of the estate of any minor, although the father of such minor be living. And the guardian so appointed shall be governed in all respects by the laws relative to guardians of the estate in other cases, but shall have no authority over the person of such minor.—Rev., 1771.

2269. Proceedings on application for.—On application to any clerk of the superior court for the custody and guardianship of any infant, idiot, inebriate or lunatic, it is the duty of such clerk to inform himself of the circumstances of the case on the oath of the applicant or of any other person; and if none of the relatives of the infant, idiot, inebriate or lunatic are present at such application, the clerk must assign, or, for any other good cause, he may assign a day for the hearing; and he shall thereupon direct notice thereof to be given to such of the relatives and to such other persons, if any, as he may deem it proper to notify. On the hearing he shall ascertain, on oath, the amount of the property, real and personal, of the infant, idiot, inebriate or lunatic, and the value of the rents and profits of the real estate, and he may grant or refuse the application, or commit the guardianship to some other person, as he may think best for the interest of the infant, idiot, inebriate, or lunatic.—Rev., 1772.

2270. Must issue letters.—The clerk of the superior court must issue to every guardian appointed by him a letter of appointment, which shall be signed by him and sealed with the seal of his office.—Rev., 1773.

2271. Removed, when.—The clerks of the superior court shall have power, on information or complaint made, at all times to remove guardians and appoint successors, to make and establish rules for the better ordering, managing and securing infants' estates, and for the better education and maintenance of wards; and it shall be their duty to do so in the following cases:

1. Where the guardian wastes or converts the money or estate of the ward to his own use.
2. Where the guardian in any manner mismanages the estate.
3. Where the guardian is about or intends to marry any ward in disparagement.
4. Where the guardian neglects to educate or maintain the ward in a manner suitable to his or her degree.
5. Where the guardian is legally disqualified to act as a person would be to be appointed administrator.
6. Where the guardian or his sureties are likely to become insolvent or non-residents of the state.—Rev., 1774.

A ward can demand of her guardian an annual statement of the manner and nature of his investments of her estate, and the rejection by the probate court of such a demand is the rejection of a right which entitles the ward to an appeal.—*Moore v. Askew*, 85—199.

2272. Interlocutory orders pending controversy.—In all cases where the letters of a guardian are revoked, the clerk of the superior court may, from time to time, pending any controversy in respect to such removal, make such interlocutory orders and decrees as will tend to the better securing the estate of the ward, or other party seeking relief by such revocation.—Rev., 1775.

2273. Resignation of; must first account.—Any guardian wishing to resign his trust may apply in writing to the superior court, setting forth the circumstances of his case. If, at the time of making the application, he also exhibits his final account for settlement, and if the clerk of the superior court is satisfied that the guardian has been faithful and has truly accounted, and if a competent person can be procured to succeed in the guardianship, the clerk of the superior court may accept the resignation of the guardian and discharge him from the trust. But the guardian so discharged and his sureties are still liable in relation to all matters connected with the trust before the resignation.—Rev., 1776.

Where permission is given to a guardian by the judge of probate to file an ex parte final account and turn over his guardianship to another, he is not thereby discharged from liabilities connected with his trust and arising before such resignation. He is still bound to account with the ward or with the succeeding guardian when so required.—*Luton v. Wilcox*, 83—20.

IV. Bonds.

2274. Not to receive property till approved.—No guardian appointed for an infant, idiot, lunatic, insane person, or inebriate, shall be permitted to receive property of the infant, idiot, lunatic, insane person or inebriate until he shall have given sufficient security, approved by a judge, or the court, to account for and apply the same under the direction of the court.—Rev., 1777.

2275. Given before letters issued; increased if property sold.—Every guardian of the estate, before letters of appointment are issued to him, must give a bond payable to the state, with two or more sufficient sureties, to be acknowledged before and approved by the clerk of the superior court, and to be jointly and severally bound. The penalty in such bond must be double, at least, the value of all personal property, and the rents and profits issuing from the real estate of the infant; which value is to be ascertained by the clerk of the superior court by the examination, on oath, of the applicant for guardianship, or of any other person. The bond must be conditioned that such guardian shall faithfully execute the trust reposed in him as such, and obey all lawful

orders of the clerk or judge, touching the guardianship of the estate committed to him. If, on application by the guardian, the court or judge shall decree a sale for any of the causes prescribed by law of the property of such infant, idiot, lunatic or insane person, before such sale be confirmed, the guardian shall be required to file a bond as now required in double the amount of the real property so sold.—Rev., 1778.

2276. Recorded in clerk's office; injured person may sue on.—The bond so taken shall be recorded in the office of the clerk of the superior court appointing the guardian; and any person injured by a breach of the condition thereof, may prosecute a suit thereon, as in other actions.—Rev., 1779.

2277. One bond where wards have common property.—When the same person is appointed guardian to two or more minors, idiots, lunatics or insane persons possessed of one estate in common, the clerk of the superior court may take one bond only in such case, upon which each of the minors or persons for whose benefit the bond is given, or their heirs or personal representatives, may have a separate action.—Rev., 1780.

2278. Renewed every three years.—Every guardian shall renew his bond before the clerk of the superior court every three years, during the continuance of the guardianship.—Rev., 1781.

2279. Duty of clerk on failing to renew.—The clerk of the superior court shall issue a citation against every guardian failing to renew his bond, as directed in the preceding section, requiring such guardian to renew his bond within twenty days after service of the citation; and on return of the citation duly served and failure of the guardian to comply therewith, the clerk shall remove him and appoint a successor.—Rev., 1782.

2280. Sureties relieved.—Any surety of a guardian who is in danger of sustaining loss by his suretyship, may file his complaint before the clerk of the superior court where the guardianship was granted, setting forth the circumstances of his case and demanding relief; and thereupon the guardian shall be required to answer the complaint within twenty days after service of the summons. If, upon the hearing, the clerk of the superior court deem the surety entitled to relief, the same may be granted by compelling the guardian to give a new bond, or to indemnify the surety against apprehended loss, or by the removal of the guardian from his trust; and in case the guardian fail to give a new bond or security to indemnify when required to do so within reasonable time, the clerk of the superior court must enter a peremptory order for his removal, and his authority as guardian shall thereupon cease.—Rev., 1783.

2281. Liability of clerk for taking insufficient.—If any clerk of the superior court shall commit the estate of an infant, idiot, lunatic, insane person or inebriate to the charge or guardianship of any person without taking good and sufficient security for the same as directed by law, such clerk shall be liable, on his official bond, at the suit of the party aggrieved, for all loss and damages sustained for want of security being taken; but if the sureties were good at the time of their being accepted, the clerk of the superior court shall not be liable.—Rev., 1784.

2282. Liability of clerk for other defaults.—If any clerk of the superior court shall wilfully or negligently do, or omit to do, any other act prohibited, or other duty imposed on him by law, by which act or omission the estate of any ward suffers damage, he shall be liable therefor as in the preceding section directed.—Rev., 1785.

5. Powers and Duties.

2283. Must take charge of estate.—Every guardian shall take possession, for the use of the ward, of all his estate, and may bring all necessary actions therefor.—Rev., 1786.

2284. Must sell perishable goods on order of clerk.—Every guardian shall sell, by order of the clerk of the superior court, all such goods and chattels of his ward as may be liable to perish or be the worse for keeping. Every such order shall be entered in the order record of the superior court, and must contain a descriptive list of the property to be sold, with the terms of sale.—Rev., 1787.

2285. Sales and rentings, how made.—All sales and rentings by guardians shall be publicly made, between the hours of ten o'clock a. m. and four o'clock p. m., after twenty days' notice posted at the courthouse and four other public places in the county. But, upon petition by the guardian, the clerk of the superior court of the county in which the land of the ward is situated, or of the county wherein the guardian has qualified, may make an order, on a satisfactory evidence, upon the oath of at least two disinterested freeholders acquainted with the said land, that the best interests of the said ward will be subserved by a private renting of said land, allowing the guardian to rent the land privately. The terms of all such rentings shall be reported to said clerk of the superior court and be approved by him. In cases where guardians have heretofore rented their ward's land at private rentings in good faith and for the benefit of the ward's estate, they shall not be liable to the penalty heretofore prescribed by law. The proceeds of all sales of personal estate and rentings of real property, except the rentings of lands leased for agricultural purposes, when not for cash, shall be secured by bond and good security.—Rev., 1788.

2286. May lease lands, when.—The guardian may lease the lands of an infant for a term not exceeding the end of the current year in which the infant shall come of age, or die in nonage. But no guardian without leave of the clerk of the superior court, shall lease any land of his ward without impeachment of waste, or for a term of more than three years, unless at a rent not less than three per centum on the assessed taxable value of the land.—Rev., 1789.

2287. When timber may be sold.—In case the land can not be rented for enough to pay the taxes and other dues thereof, and there is not money sufficient for that purpose, the guardian, with the consent of the clerk of the superior court, may annually dispose of, or use so much of the lightwood, and box or rent so many pine trees, or sell so much of the timber on the same, as may raise enough to pay the taxes and other duties thereon and no more.—Rev., 1790.

2288. Plate and jewelry to be kept.—All plate and jewelry shall be preserved and delivered to the ward at age, in kind, according to weight and quantity.—Rev., 1791.

2289. Funds invested by fiduciaries.—Guardians, trustees, and others acting in a fiduciary capacity, having surplus funds of their wards and cestuis que trustent to loan, may invest in United States bonds, or any securities for which the United States are responsible, or in consolidated bonds of the state of North Carolina, and in settlements by guardians, trustees and others acting in a fiduciary capacity, such bonds or other security of the United States, and such bonds of the state of North Carolina, shall be deemed cash to the amount actually paid for same, including the premium, if any paid for such bonds or other securities, and may be paid as such by the transfer thereof to the persons entitled.—Rev., 1792.

Note.—For interest guardian notes bear, see s. 2522 infra.

2290. Deposit of trust funds, at fiduciaries' risk.—No provision in any charter or certificate of organization of any corporation permitting deposits therein by any guardian, executor or other trustee or fiduciary, or by any county, bonded or other officer, shall operate or be construed to relieve or discharge them, or either of them, from official responsibility, or to relieve them, or either of them, or their sureties, from liability on their official bonds.—Rev., 1793.

2291. Executor of deceased, pays money to clerk.—In all cases where a guardian of any minor child or of an idiot, lunatic, inebriate or insane person shall die, it shall be competent for the executor or administrator of such deceased guardian, at any time after the grant of letters testamentary or of administration, to pay into the office of the clerk of the superior court of the county where such deceased guardian was appointed, any moneys belonging to any such minor child, idiot, lunatic, insane person or inebriate, and any such payment shall have the effect to discharge the estate of said deceased guardian and his sureties upon his guardian bond to the extent of the amount so paid.—Rev., 1794.

2292. When liable for debts.—Every guardian shall diligently endeavor to collect, by all lawful means, all bonds, notes, obligations or moneys due his ward when any debtor or his sureties are likely to become insolvent, on pain of being liable for the same.—Rev., 1795.

2293. Liable for land sold for taxes.—If any guardian suffer his ward's lands to lapse or become forfeited or be sold for nonpayment of taxes or other dues, he shall be liable to answer for the full value thereof to his ward.—Rev., 1796.

2294. Liable for costs, when.—All fees and costs of the superior court for issuing orders, citations, summonses or other process against guardians for their supposed defaults, shall be paid by the party found in default.—Rev., 1797.

Note.—For duty of guardian to pay owelty, see s. 2954 infra.

6. Estates Sold.

2295. By special proceeding; approved by judge.—On application of the guardian by petition, verified upon oath, to the superior court, showing that the interest of the ward would be materially promoted by the sale of any part of his estate, real or personal, the proceeding shall be conducted as in other cases of special proceedings; and the truth of the matter alleged in the petition being ascertained by satisfactory proof, a decree may thereupon be made that a sale be had by such person, in such way and on such terms as may be most advantageous to the interest of the ward; but no sale shall be made until approved by the judge of the court, nor shall the same be valid, nor any conveyance of title made, unless confirmed and directed by the judge, and the proceeds of the sale shall be exclusively applied and secured to such purposes and on such trusts as the judge shall specify.—Rev., 1798.

One who conducts a suit as guardian or next friend of infants is not a party of record, but the infants themselves are the real plaintiffs, nor will anyone who has an interest in the action hostile to that of the infants be permitted to conduct the same.—George v. High, 85—113.

2296. Property and fund held on same trusts.—Whenever, in consequence of any sale under the preceding section, the real or personal property of the ward is saved from demands to which in the first instance it may be liable, the final decree shall declare and set apart a portion of the personal or real estate thus saved, of value equal to the real and personal estate sold, as property exchanged for that sold; and in all such cases of sale, whereby real is substituted by personal, or personal by real property, the beneficial interest in the property

acquired shall be enjoyed, alienated, devised or bequeathed, and shall descend and be distributed, as by law the property sold might and would have been, had it not been sold, until it be reconverted from the character thus impressed upon it by some act of the owner, and restored to its character proper.—Rev., 1799.

2297. Sold to pay ward's debts.—When a guardian has notice of a debt or demand against the estate of his ward, he may apply by petition, setting forth the facts to the clerk of the superior court wherein the guardianship was granted, for an order to sell so much of the personal or real estate as may be sufficient to discharge such debt or demand; and the order of the court shall particularly specify what property is to be sold and the terms of sale; but no real estate shall be sold under this section, in any case, without the revision and confirmation of the order therefor by the judge of the superior court.—Rev., 1800.

2298. Proceeds assets for creditors; reached as against executors.—The proceeds of sale under the preceding section shall be considered as assets in the hands of the guardian for the benefit of creditors, in like manner as assets in the hands of a personal representative; and the same proceedings may be had against the guardian with respect to such assets as might be taken against an executor, administrator or collector in similar cases.—Rev., 1801.

Note.—For conveyances by infant trustees, see s. 1036 of the Revisal.

7. Returns and Accounting.

2299. First, within three months.—Every guardian, within three months after his appointment, shall exhibit an account, upon oath, of the estate of his ward, to the clerk of the superior court; but such time may be extended by the clerk of the superior court, on good cause shown, not exceeding six months.—Rev., 1802.

2300. Compelled by attachment.—In cases of default to exhibit the return required by the preceding section, the clerk of the superior court must issue an order requiring the guardian to file such return forthwith, or to show cause why an attachment should not issue against him. If, after due service of the order, the guardian does not, on the return day of the order, file such return, or obtain further time to file the same, the clerk of the superior court shall issue an attachment against him, and commit him to the common jail of the county, till he files such return.—Rev., 1803.

2301. To be made of new assets.—Whenever further property of any kind, not included in any previous return, comes to the hands or knowledge of any guardian, he must cause the same to be returned within three months after the possession or discovery thereof; and the making of such return of new assets, from time to time, may be enforced in the same manner as prescribed in the preceding section.—Rev., 1804.

2302. Annual accounts.—Every guardian shall, within twelve months from the date of his qualification or appointment, and annually, so long as any of the estate remains in his control, file, in the office of the clerk of the superior court, an inventory and account, under oath, of the amount of property received by him, or invested by him, and the manner and nature of such investment, and his receipts and disbursements for the past year in the form of debit and credit. He must produce vouchers for all payments. The clerk of the superior court may examine on oath such accounting party, or any other person, concerning the receipts, disbursements or any other matter relating to the estate; and having carefully revised and audited such account, if he approve the same, he must indorse his approval thereon, which shall be deemed prima facie evidence of correctness.—Rev., 1805.

2303. Compelled by attachment and removal.—If any guardian omit to account, as directed in the preceding section, or renders an insufficient and unsatisfactory account, the clerk of the superior court shall forthwith order such guardian to render a full and satisfactory account, as required by law, within twenty days after service of the order. Upon return of the order, duly served, if such guardian fail to appear or refuse to exhibit such account, the clerk of the superior court may issue an attachment against him for contempt and commit him till he exhibits such account, and may likewise remove him from office.—Rev., 1806.

2304. Final account.—A guardian may be required to file such account at any time after six months from the ward's coming of full age or the cessation of the guardianship; but such account may be filed voluntarily at any time, and, whether the accounting be voluntary or compulsory, it shall be audited and recorded by the clerk of the superior court.—Rev., 1807.

2305. Allowed reasonable disbursements and expenses.—Every guardian may charge in his annual account all reasonable disbursements and expenses; and if it appear that he hath really and bona fide disbursed more in one year than the profits of the ward's estate, for his education and maintenance, the guardian shall be allowed and paid for the same out of the profits of the estate in any other year; but such disbursements must, in all cases, be suitable to the degree and circumstances of the estate of the ward.—Rev., 1808.

Note.—See s. 2266 infra.

A guardian is not entitled to commissions on money collected and used by him in his own business, nor any debts of his ward paid to a firm of which the guardian is a member. *Burke v. Turner*, 85—500.

In order to obtain an allowance for maintenance, it must be shown that there is a present income belonging absolutely to the infant, and that the allowance shall be for his benefit.—*Harris v. Harrison*, 75—432.

2306. Commissions.—The superior court shall allow commissions to the guardian for his time and trouble in the management of the ward's estate, in the same manner and under the same rules and restrictions as allowances are made to executors, administrators and collectors.—Rev., 1809.

8. Estate Protected when no Guardian.

2307. Duty of grand jury relating to orphans; clerk to furnish it list of guardians.—The grand jury of every county is charged with, and shall present to the superior court the names of all orphan children that have no guardian or are not bound out to some trade or employment. They shall further inquire of all abuses, mismanagement and neglect of all such guardians as are appointed by the clerk of the superior court. The clerk of the superior court shall, at each term of the superior court, lay before the grand jury a list of all guardians acting in his county or appointed by him.—Rev., 1810.

2308. Solicitor to apply for receiver, when.—Whenever an orphan, having any estate, is presented by a grand jury, for whom no suitable person will become guardian, the clerk of the superior court must give notice thereof forthwith to the solicitor of the state for the judicial district, who shall apply in behalf of the orphan to the judge of the superior court of the county where such presentment was made, to the end that a receiver may be appointed.—Rev., 1811.

2309. Action brought by solicitor.—Whenever any guardian is removed, and no person is appointed to succeed in the guardianship, the clerk of the superior court shall certify the name of such guardian and his sureties to the solicitor of the judicial district, who shall forthwith institute an action on the bond of the guardian in the superior court, for securing the estate of the ward.—Rev., 1812.

2310. Receiver appointed.—The judge of the superior court, either residing in or presiding over the courts of the district, before whom such action is brought, shall have power to appoint the clerk of the superior court or some discreet person as a receiver to take possession of the ward's estate, to collect all moneys due him, to secure, lend, invest or apply the same for the benefit and advantage of the ward, under the direction and subject to such rules and orders in every respect as the said judge may from time to time make in regard thereto; and the accounts of such receiver shall be returned, audited and settled as the judge may direct. The receiver shall be allowed such amounts for his time, trouble and responsibility as seem to the judge reasonable and proper; and such receivership may be continued until a suitable person can be procured to take the guardianship.—Rev., 1813.

The sureties on the official bond of the clerk are not liable for his default in administering a fund as a receiver.—*Kerr v. Brandon*, 84—128.

But where the appointment of receiver is conferred under the statute authorizing the court to commit the estate of an infant to some discreet person, the official bond of the clerk is liable.—*Rogers v. Odom*, 86—432.

2311. Property obtained from receiver.—When another guardian is appointed, he may apply by motion, on notice, to the judge of the superior court for an order upon the receiver to pay over all the money, estate and effects of the ward; and if no such guardian is appointed, then the ward, on coming of age, or in case of his death his executor, administrator or collector, and the heir or personal representative of the idiot, lunatic or insane person, shall have the like remedy against the receiver.—Rev., 1814.

2312. Solicitor shall prosecute action.—The solicitor shall prosecute the action and take all necessary orders therein, and for his services shall be allowed such reasonable compensation as may be just, not to exceed ten dollars; in passing on the returns of receivers, where the estate of the infant does not exceed five hundred dollars, not to exceed five dollars; and where the estate exceeds five hundred dollars, not to exceed ten dollars. The amount in each case to be fixed by the judge.—Rev., 1815.

Note.—For law directing use of estates less than twenty dollars in value, see s. 924 of the Revisal.

9. Foreign Guardians.

2313. May have ward's estate removed.—Where any ward, idiot, lunatic or insane person, residing in another state or territory, or in the District of Columbia, is entitled to any personal estate in this state, or personal property substituted for realty by decree of court, or to any money arising from the sale of real estate, whether the same be in the hands of any guardian residing in this state, or of any executor, administrator or other person holding for the ward, idiot, lunatic or insane person, or if the same (not being adversely held and claimed) be not in the lawful possession or control of any person, the guardian of the ward, idiot, lunatic or insane person, duly appointed at the place where such ward, idiot, lunatic or insane person resides, may apply to have such estate removed to the residence of the ward, idiot, lunatic or insane person by petition filed before the clerk of the superior court of the county in which the property or some portion thereof is situated; which shall be proceeded with as in other cases of special proceedings.—Rev., 1816.

2314. What petition must show.—The petitioner must show to the court a copy of his appointment as guardian and bond duly authenticated, and must prove to the court that the bond is sufficient, as well in the ability of the sureties as in the sum mentioned therein, to secure all the estate of the ward wherever situated.—Rev., 1817.

2315. Who may be made defendants.—Any person may be made a party defendant to the proceeding who is specified in section four hundred and ten.—Rev., 1818.

Note.—For rate of interest guardian notes to bear, see Interest, s. 2522 infra.

For guardians of idiots, inebriates and lunatics, see Idiots, etc., ss. 2413-2418 infra.

For cross-index of appointment of guardians, see Clerk Superior Court, s. 915 of the Revisal.

For payment of owelty of partition due by ward, see s. 2954 infra.

CHAPTER XXXIII.

HABEAS CORPUS.

1. Generally.

2316. Cause of restraint of liberty enquired into.—Every person restrained of his liberty is entitled to a remedy to enquire into the lawfulness thereof, and to remove the same, if unlawful; and such remedy ought not to be denied or delayed.—Rev., 1819.

2317. Habeas corpus shall not be suspended.—The privileges of the writ of habeas corpus shall not be suspended.—Rev., 1820.

2. The Application.

2318. Who may prosecute writ.—Every person imprisoned or restrained of his liberty within this state, for any criminal or supposed criminal matter, or on any pretense whatsoever, except in cases specified in the succeeding section, may prosecute a writ of habeas corpus, according to the provisions of this chapter, to inquire into the cause of such imprisonment or restraint, and if illegal, to be delivered therefrom.—Rev., 1821.

2319. When denied.—Application to prosecute the writ shall be denied in the following cases:

1. Where the persons are committed or detained by virtue of process issued by a court of the United States, or a judge thereof, in cases where such courts or judges have exclusive jurisdiction under the laws of the United States, or shall have acquired exclusive jurisdiction by the commencement of suits in such courts.

2. Where persons are committed or detained by virtue of the final order, judgment or decree of a competent tribunal of civil or criminal jurisdiction, or by virtue of an execution issued upon such final order, judgment or decree.

3. When any person has wilfully neglected, for the space of two whole terms after his imprisonment, to apply for the writ to the superior court of the county in which he may be imprisoned, such person shall not have a habeas corpus in vacation time for his enlargement.

4. Where no probable ground for relief is shown in the application.—Rev., 1822.

Note.—See s. 2345 infra.

2320. By whom made.—Application for the writ may be made either by the party for whose relief it is intended, or by any person in his behalf.—Rev., 1823.

2321. How and to whom.—Application for the writ shall be made in writing, signed by the applicant—

1. To any one of the justices of the supreme court.

2. To any one of the superior court judges, either at term time or in vacation.—Rev., 1824.

2322. What it must state.—The application must state in substance, as follows:

1. That the party, in whose behalf the writ is applied for, is imprisoned or restrained of his liberty, the place where, and the officer or person by whom he is imprisoned or restrained, naming both parties, if their names are known, or describing them if they are not known.

2. The cause or pretense of such imprisonment or restraint, according to the knowledge or belief of the applicant.

3. If the imprisonment is by virtue of any warrant or other process, a copy thereof shall be annexed, or it shall be made to appear that a copy thereof has been demanded and refused, or that for some sufficient reason a demand for such copy could not be made.

4. If the imprisonment or restraint be alleged to be illegal, the application must state in what the alleged illegality consists; and that the legality of the imprisonment or restraint has not been already adjudged, upon a prior writ of habeas corpus, to the knowledge or belief of the applicant.

5. The facts set forth in the application must be verified by the oath of the applicant, or by that of some other credible witness, which oath may be administered by any person authorized by law to take affidavits.—Rev., 1825.

2323. When issued without.—Whenever the supreme or superior court, or any judge of either, shall have evidence from any judicial proceeding before such court or judge, that any person within this state is illegally imprisoned or restrained of his liberty, it shall be the duty of said court or judge to issue a writ of habeas corpus for his relief, although no application be made for such writ.—Rev., 1826.

3. The Writ.

2324. When granted.—Any court or judge empowered to grant the writ, to whom such applications may be presented, shall grant the writ without delay, unless it appear from the application itself or from the documents annexed that the person applying or for whose benefit it is intended is, by this chapter, prohibited from prosecuting the writ.—Rev., 1827.

2325. Penalty for refusal to grant.—If any judge authorized by this chapter to grant writs of habeas corpus shall refuse to grant such writ when legally applied for, every such judge shall forfeit to the party aggrieved two thousand five hundred dollars.—Rev., 1828.

2326. When sufficient.—No writ of habeas corpus shall be disobeyed on account of any defect of form. It shall be sufficient—

1. If the person having the custody of the party imprisoned or restrained be designated either by his name of office, if he have any, or by his own name, or if both such names be unknown or uncertain, he may be described by an assumed appellation, and any one who may be served with the writ shall be deemed the person to whom it is directed, although it may be directed to him by a wrong name, or description, or to another person.

2. If the person who is directed to be produced be designated by name, or if his name be uncertain or unknown, he may be described by an assumed appellation or in any other way, so as to designate the person intended.—Rev., 1829.

4. The Return.

2327. When returnable.—Writs of habeas corpus may be made returnable at a certain time, or forthwith, as the case may require. If the writ be returnable at a certain time, such return shall be made and the party shall be produced at the time and place specified therein.—Rev., 1830.

2328. What to contain; when verified.—The person or officer on whom the writ is served must make a return thereto in writing, and,

except where such person shall be a sworn public officer and shall make his return in his official capacity, it must be verified by his oath. The return must state plainly and unequivocally—

1. Whether he have or have not the party in his custody or under his power or restraint.

2. If he have the party in his custody or power, or under his restraint, the authority and the cause of such imprisonment or restraint, setting forth the same at large.

3. If the party be detained by virtue of any writ, warrant, or other written authority, a copy thereof shall be annexed to the return; and the original shall be produced and exhibited on the return of the writ to the court or judge before whom the same is returnable.

4. If the person or officer upon whom such writ is served shall have had the party in his power or custody, or under his restraint, at any time prior or subsequent to the date of the writ, but has transferred such custody or restraint to another, the return shall state particularly to whom, at what time, for what cause and by what authority such transfer took place.—Rev., 1831.

2329. Body produced, when.—If the writ require it, the officer or person on whom the same has been served shall also produce the body of the party in his custody or power, according to the command of the writ, except in the case of the sickness of such party, as hereinafter provided.—Rev., 1832.

2330. Served, how and by whom.—The writ of habeas corpus may be served by any qualified elector of this state, thereto authorized by the court or judge allowing the same. It may be served by delivering the writ, or a copy thereof, to the person to whom it is directed; or, if such person can not be found, by leaving it, or a copy, at the jail, or other place in which the party for whose relief it is intended is confined, with some under officer or other person of proper age; or, if none such can be found, or if the person attempting to serve the writ be refused admittance, by affixing a copy thereof in some conspicuous place on the outside, either of the dwelling-house of the party to whom the writ is directed, or of the place where the party is confined for whose relief it is sued out.—Rev., 1833.

5. Obedience Compelled.

2331. Attachment for failure to obey.—If the person or officer on whom any writ of habeas corpus shall have been duly served shall refuse or neglect to obey the same, by producing the body of the party named or described therein, and by making a full and explicit return thereto, within the time required, and no sufficient excuse be shown for such refusal or neglect, it shall be the duty of the court or judge before whom the writ shall have been made returnable, upon due proof of the service thereof, forthwith to issue an attachment against such person or officer, directed to the sheriff of any county within this state, and commanding him forthwith to apprehend such person or officer and bring him immediately before such court or judge, and on being so brought such person or officer shall be committed to close custody in the jail of the county where such court or judge may be, without being allowed the liberties thereof, until such person or officer make return to such writ and comply with any order that may be made by such court or judge in relation to the party for whose relief the writ shall have been issued.—Rev., 1834.

2332. Penalty, judge refusing attachment.—If any judge shall willfully refuse to grant the writ of attachment, as provided for in the preceding section, he shall be liable to impeachment, and moreover shall forfeit to the party aggrieved twenty-five hundred dollars.—Rev., 1835.

2333. Sheriff attached, writ to coroner; penalty.—If a sheriff shall have neglected to return the writ agreeably to the command thereof, the attachment against him may be directed to the coroner or to any other person to be designated therein, who shall have power to execute the same, and such sheriff, upon being brought up, may be committed to the jail of any county other than his own.—Rev., 1836.

2334. Precept to bring up party detained.—The court or judge, by whom any such attachment may be issued, may also at the same time, or afterwards, direct a precept to any sheriff, coroner, or other person to be designated therein, commanding him to bring forthwith, before such court or judge, the party, wherever to be found, for whose benefit the writ of habeas corpus has been granted.—Rev., 1837.

2335. Penalty, judge refusing to grant precept.—If any judge shall refuse to grant the precept provided for in the preceding section, he shall be liable to impeachment, and moreover shall forfeit to the party aggrieved twenty-five hundred dollars.—Rev., 1838.

2336. Penalty, judge conniving at insufficient return.—If any judge shall grant the attachment, or the precept, and shall give the officer or other person charged with the execution of the same verbal or written instructions not to execute the same, or to make any evasive or insufficient return, or any return other than that provided by law; or shall connive at the failing to make any return or any evasive or insufficient return, or any return other than that provided by law, he shall be liable to impeachment, and moreover shall forfeit to the party aggrieved twenty-five hundred dollars.—Rev., 1839.

2337. Power of county to aid service.—In the execution of any such attachment, precept or writ, the sheriff, coroner, or other person to whom it may be directed, may call to his aid the power of the county, as in other cases.—Rev., 1840.

2338. Obedience to order of discharge, compelled.—Obedience to a judgment or order for the discharge of a prisoner or person restrained of his liberty, pursuant to the provisions of this chapter, may be enforced by the court or judge by attachment in the same manner and with the same effect as for a neglect to make return to a writ of habeas corpus; and the person found guilty of such disobedience shall forfeit to the party aggrieved two thousand five hundred dollars, besides any special damages which such party may have sustained.—Rev., 1841.

2339. Not liable civilly for obedience.—No officer or other person shall be liable to any civil action for obeying a judgment or order of discharge upon writ of habeas corpus.—Rev., 1842.

6. Proceedings and Judgment.

2340. Notice to interested parties.—When it appears from the return to the writ that the party named therein is in custody on any process, or by reason of any claim of right, under which any other person has an interest in continuing his imprisonment or restraint, no order shall be made for his discharge until it shall appear that the person so interested, or his attorney, if he have one, shall have had reasonable notice of the time and place at which such writ is returnable.—Rev., 1843.

2341. Notice to solicitor.—When it appears from the return that such party is detained upon any criminal accusation, the court or judge may, if he thinks proper, make no order for the discharge of such party until sufficient notice of the time and place at which the writ shall have been returned, or shall be made returnable, be given to the solicitor of the county in which the person prosecuting the writ is detained.—Rev., 1844.

2342. Witness subpoenaed.—Any party to a proceeding on a writ of habeas corpus may procure the attendance of witnesses at the hearing, by subpoena, to be issued by the clerk of any superior court, under the same rules, regulations and penalties prescribed by law in other cases.—Rev., 1845.

2343. Facts examined into; proofs heard summarily.—The court or judge before whom the party is brought on a writ of habeas corpus shall, immediately after the return thereof, examine into the facts contained in such return, and into the cause of the confinement or restraint of such party, whether the same shall have been upon commitment for any criminal or supposed criminal matter or not; and if issue be taken upon the material facts in the return, or other facts are alleged to show that the imprisonment or detention is illegal, or that the party imprisoned is entitled to his discharge, the court or judge shall proceed, in a summary way, to hear the allegations and proofs on both sides, and to do what to justice shall appertain in delivering, bailing or remanding such party.—Rev., 1846.

2344. Party discharged, when.—If no legal cause be shown for such imprisonment or restraint, or for the continuance thereof, the court or judge shall discharge the party from the custody or restraint under which he is held. But if it appear on the return to the writ that the party is in custody by virtue of civil process from any court legally constituted, or issued by any officer in the course of judicial proceedings before him, authorized by law, such party can be discharged only in one of the following cases:

1. Where the jurisdiction of such court or officer has been exceeded, either as to matter, place, sum or person.

2. Where, though the original imprisonment was lawful, yet by some act, omission or event, which has taken place afterwards, the party has become entitled to be discharged.

3. Where the process is defective in some matter of substance required by law, rendering such process void.

4. Where the process, though in proper form, has been issued in a case not allowed by law.

5. Where the person, having the custody of the party under such process, is not the person empowered by law to detain him.

6. Where the process is not authorized by any judgment, order or decree of any court, nor by any provision of law.—Rev., 1847.

2345. Party remanded, when.—It shall be the duty of the court or judge forthwith to remand the party, if it appear that he is detained in custody, either—

1. By virtue of process issued by any court or judge of the United States, in a case where such court or judge has exclusive jurisdiction.

2. By virtue of the final judgment or decree of any competent court of civil or criminal jurisdiction, or of any execution issued upon such judgment or decree.

3. For any contempt specially and plainly charged in the commitment by some court, officer or body, having authority to commit for the contempt so charged.

4. That the time during which such party may be legally detained has not expired.—Rev., 1848.

2346. Party bailed or remanded, when.—If it appear that the party has been legally committed for any criminal offense, or if it appear by the testimony offered with the return of the writ, or upon the hearing thereof, that the party is guilty of such an offense, although the commitment be irregular, the court or judge shall proceed to let such party to bail, if the case be bailable and good bail be offered; if not, the court or judge shall forthwith remand such party to the custody or place him under the restraint from which he was taken, if the

person or officer, under whose custody or restraint he was, be legally entitled thereto; if not so entitled, the court or judge shall commit such party to the custody of the officer or person legally entitled thereto.—Rev., 1849.

2347. Party in execution not to be discharged on habeas corpus.—When a writ of habeas corpus cum causa shall issue, and the sheriff or other officer to whom it is directed shall return upon the same that the prisoner is condemned, by judgment given against him, and held in custody by virtue of an execution issued against him, the prisoner shall not be let to bail, but shall be presently remanded, where he shall remain until discharged in due course of law.—Rev., 1850.

2348. Determined in absence of party, when.—Whenever, from the illness or infirmity of the person directed to be produced by a writ of habeas corpus, such person can not, without danger, be brought before the court or judge, where the writ is made returnable, the party in whose custody he is may state the fact in his return to the writ; and if the court or judge be satisfied of the truth of the allegation and the return be otherwise sufficient the court or judge shall proceed to decide on such return and to dispose of the matter in the same manner as if the body had been produced.—Rev., 1851.

2349. Penalty for committing for same cause.—No person who has been set at large upon any writ of habeas corpus shall be again imprisoned or detained for the same cause by any person whatsoever other than by the legal order or process of the court wherein he shall be bound by recognizance to appear or of any other court having jurisdiction in the case, under the penalty of two thousand five hundred dollars to the party aggrieved thereby.—Rev., 1852.

7. Custody of Children.

2350. Awarded by judge; modification of order.—When a contest shall arise on a writ of habeas corpus between any husband and wife, who are living in a state of separation, without being divorced, in respect to the custody of their children, the court or judge, on the return of such writ, may award the charge or custody of the child or children so brought before it either to the husband or to the wife, for such time, under such regulations and restrictions, and with such provisions and directions as will, in the opinion of such court or judge, best promote the interest and welfare of the children. At any time after the making of such orders the court or judge may, on good cause shown, annul, vary or modify the same.—Rev., 1853.

Note.—For consequence of divorce on right to custody of children, see s. 1570 of the Revisal.

For effect of abandonment, see s. 180 of the Revisal.

2351. Appeal to supreme court.—In all cases of habeas corpus, where a contest shall arise in respect to the custody of minor children, either party may appeal to the supreme court from the final judgment.—Rev., 1854.

8. Ad Testificandum.

2352. Courts of record may issue.—Every court of record shall have power, upon the application of any party to any suit or proceeding, civil or criminal, pending in such court, to issue a writ of habeas corpus, for the purpose of bringing before the said court any prisoner who may be detained in any jail or prison within the state, for any cause, except such prisoner be under sentence for a capital felony, to be examined as a witness in such suit or proceeding, in behalf of the party making the application.—Rev., 1855.

2353. Issued by justices and clerks, when.—Such writ of habeas corpus may be issued by any justice of the peace or clerk of the superior court upon application as provided in the preceding section, to bring any person confined in the jail or prison of the same county where such justice or clerk may reside, to be examined as a witness before such justice or clerk. And in cases where the testimony of any prisoner is needed in a proceeding before a justice of the peace, or a clerk, and such person be confined in a county in which such justice or clerk does not reside, application for habeas corpus to testify may be made to any judge of the supreme or superior court.—Rev., 1856.

2354. Application, what to contain.—The application for the writ shall be made by the party to the suit or proceeding in which the writ is required, or by his agent or attorney. It must be verified by the applicant, and shall state—

1. The title and nature of the suit or proceeding in regard to which the testimony of such prisoner is desired.

2. That the testimony of such prisoner is material and necessary to such party on the trial or hearing of such suit or proceeding, as he is advised by counsel and verily believes.—Rev., 1857.

2355. How and by whom served.—The writ of habeas corpus to testify shall be served by the same person, and in like manner in all respects, and enforced by the court or officer issuing the same as prescribed in this chapter for the service and enforcement of the writ of habeas corpus cum causa.—Rev., 1858.

2356. Applicant to pay expenses and give bond.—The service of the writ shall not be complete, however, unless the applicant for the same shall tender to the person in whose custody the prisoner may be, if such person be a sheriff, coroner, constable or marshal, the fees and expenses allowed by law for bringing such prisoner, nor unless he shall also give bond, with sufficient security, to such sheriff, coroner, constable or marshal, as the case may be, conditioned that such applicant will pay the charges of carrying back such prisoner.—Rev., 1859.

2357. Duty of officer; penalty.—It shall be the duty of the officer to whom the writ is delivered or upon whom it is served, whether such writ be directed to him or not, upon payment or tender of the charges allowed by law, and the delivery or tender of the bond herein prescribed, to obey and return such writ according to the exigency thereof upon pain, on refusal or neglect, to forfeit to the party on whose application the same shall have been issued the sum of five hundred dollars.—Rev., 1860.

2358. Prisoner remanded.—After having testified the prisoner shall be remanded to the prison from which he was taken.—Rev., 1861.

CHAPTER XXXIV.

HEALTH.

2359. Who composes auxiliary board of health.—There shall be an auxiliary board of health in each county, whose function shall be upon the call of the chairman of the board of county commissioners to advise the county authorities in all matters pertaining to the public health. These boards shall be composed of all registered physicians resident in the county.—Rev., 4443.

2360. How elected; duties; compensation; elect county superintendent.—Two physicians shall be elected, one by the chairman of the board of county commissioners and one by the mayor of the county town, who, together with the board of county commissioners, shall constitute the county sanitary committee, of which committee the chairman of the board of county commissioners shall be ex officio chairman. Their term of office shall be coterminous with that of the commissioners with whom they serve, and when on duty they shall receive the same compensation as is received by county commissioners. The county sanitary committee shall have the immediate care and responsibility of the health interests of their county. They shall make such rules and regulations, pay such fees and salaries and impose such penalties as in their judgment may be necessary to protect and advance the public health. They shall elect a registered physician, not a member of the sanitary committee, to serve two years, with the title of county superintendent of health and shall fix his compensation.—Rev., 4444.

2361. Duties of.—The duties of the county superintendent of health shall be to carry out as far as possible such work as may be directed by the county sanitary committee and by the state board of health. He shall always promptly advise the secretary of the state board of health of the unusual prevalence of disease in his county, especially of typhoid fever, scarlet fever, diphtheria, yellow fever, smallpox and cholera. He shall make the medico-legal postmortem examinations for coroner's inquests, attend the inmates of the home for the aged and infirm, and the prisoners in the jail or convict camp of his county, and make examinations of lunatics for commitment. He shall be the sanitary inspector of the home and jail, including convict camps of his county, making monthly reports to the board of county commissioners and to the secretary of the state board of health.—Rev., 4445.

2362. Compensation.—The board of county commissioners shall fix the salary of the county superintendent of health, which shall be paid by the county.—Rev., 4446.

2363. Reports monthly statistics; penalty for failure.—Monthly reports of vital statistics, upon a plan to be made by the state board of health or their secretary acting under their instructions, shall be made by the county superintendent to the secretary of the state board and a failure to report by the tenth of the month for the preceding month shall subject the delinquent to a fine of one dollar for each day of delinquency, and this amount shall be deducted from the salary of the superintendent by the board of county commissioners on the statement of such delinquency by the secretary of the state board of health; and such secretary is hereby required to notify on the eleventh day of each month the chairman of the board of county commissioners of such delinquency. The county superintendent shall report to the secretary of the state board the presence in his county of any case of smallpox, yellow fever or typhus fever or cholera within twenty-four hours after it has come to his knowledge, and upon failure to make such report within the prescribed time the county commissioners shall deduct five dollars from his salary for each day of delay in reporting.—Rev., 4447.

2364. Notified of existence of certain diseases; notifies state board.—When a physician knows that a person whom he is called to visit is infected with smallpox, diphtheria, scarlet fever, typhus fever yellow fever or cholera he shall immediately give notice thereof to the health officer or mayor, if the sick person be in a city or incorporated town, otherwise to the county superintendent of health. And it shall be the duty of the said county superintendent, health officer or mayor receiving such notice of the presence of a case of smallpox, yellow

fever, typhus fever or cholera within his jurisdiction to communicate the same immediately by mail or telegraph to the secretary of the state board of health.—Rev., 4448.

2365. Keeps records of disease; notifies schools.—The county superintendent of health, or the board of health in the several cities or towns where organized, otherwise the authorities of said cities or towns, shall cause a record to be kept of all reports received in pursuance of the preceding section, and such records shall contain the names of all persons who are sick, the localities in which they live, the diseases with which they are affected, together with the date and names of all persons reporting any such cases. The boards of health of cities and towns wherever organized, and where not, the mayors of the same, and in other cases the county superintendent of health, shall give the school committee of the city or town, the principals of private schools and the superintendent of public instruction of the county, when the schools are in session, notice of all such cases of contagious diseases reported to them according to the provisions of this chapter.—Rev., 4449.

2366. Nuisances abated under supervision of.—Whenever and wherever a nuisance upon premises shall exist which in the opinion of the county superintendent of health, is dangerous to the public health, it shall be his duty to notify in writing the parties occupying the premises, or the owner, if the premises are not occupied, of its existence, its character and the means of abating it. Upon this notification the parties shall proceed to abate the nuisance: Provided, however, that if the party notified shall make oath or affirmation before a justice of the peace of his or her inability to carry out the directions of the superintendent, it shall be done at the expense of the town, city or county in which the offender lives. In the latter case the limit of the expense chargeable to the city, town or county shall not be more than one hundred dollars in any case: Provided, further, that nothing in this section shall be construed to give the superintendent the power to destroy or injure property without due process of law as now exists for the abatement of nuisances.—Rev., 4450.

2367. Vaccination by.—On the appearance of a case of smallpox in any neighborhood all due diligence shall be used by the superintendent of health that warning shall be given, and all persons not able to pay shall be vaccinated free of charge by him and the county superintendent shall vaccinate every person admitted into a public institution, jail, county home, public school, as soon as practicable, unless he is satisfied upon examination that the person is already successfully vaccinated; the money for vaccine to be furnished by the county commissioners. The authorities of any city or town or the sanitary committee of any county, may make such regulations and provisions for the vaccination of its inhabitants and impose such penalties as they may deem necessary to protect the public health.—Rev., 4451.

2368. Householders to disinfect.—When a householder knows that a person within his family is sick with either of the diseases enumerated in section, he shall immediately give notice thereof to the health officer or mayor, if he resides in a city or incorporated town, otherwise to the county superintendent of health, and upon the death or recovery or removal of such person, the rooms occupied and the articles used by him shall be disinfected by such householder in the manner indicated in section
—Rev., 4452.

2369. Children kept from school, when.—The school committees of public schools, superintendents of graded schools and the principals of private schools shall not allow any pupil to attend the school under their control while any member of the household to which said pupil

belongs is sick of either smallpox, diphtheria, measles, scarlet fever, yellow fever, typhus fever or cholera, mumps or itch, or during a period of two weeks after the death, recovery or removal of such sick person; and any pupil coming from such household shall be required to present to the teacher of the school the pupil desires to attend a certificate from the attending physician, city health officer or county superintendent of health of the facts necessary to entitle him to admission in accordance with the above regulations. The instructions in accordance with the provisions of this section given to the teachers of the schools within twenty-four hours after the receipt of each and every notice shall be deemed performance of duty on the part of the school committee.—Rev., 4453.

2370. Towns and cities may make rules to protect.—The authorities of any city or town, not already authorized in its charter, are hereby authorized to make such regulations, pay such fees and salaries and impose such penalties as in their judgment may be necessary for the protection and the advancement of the public health.—Rev., 4454.

2371. County commissioners may levy special tax to protect, when.—The board of county commissioners of each county is hereby authorized at any time to levy a special tax to be expended under the direction of a committee composed of the chairman of the board of county commissioners and the county superintendent of health for the preservation of the public health.—Rev., 4455.

2372. Contingent fund.—A contingent fund of five thousand dollars is appropriated, subject to the auditor's warrant, upon the recommendation of the governor, to be expended in pursuance of the provisions of this chapter when rendered necessary by a visitation of cholera or any other pestilential disease.—Rev., 4456.

2373. Annual Appropriation.—For carrying out the provisions of this chapter as to the duties of the state board of health, two thousand dollars, or so much thereof as may be necessary, are hereby annually appropriated, to be paid on requisition to be signed by the secretary and president of the state board of health: and the printing and stationery necessary for the board to be furnished upon requisition upon the state printer. A yearly statement shall be made to the governor of all moneys received and expended in pursuance of this chapter.—Rev., 4457.

2374. Powers of local boards not affected.—Nothing in this chapter shall operate as a repeal or abridgement of powers conferred by any special act on any local board of health.—Rev., 4458.

2375. Bodies of persons dying of certain diseases, how transported.—No railroad corporation or other common carrier or persons shall convey or cause to be conveyed through or from any city, town or county in this state the remains of any person who has died from smallpox, measles, scarlet fever, diphtheria, typhus fever, yellow fever or cholera until such body has been disinfected and encased in such manner as shall be directed by the state board of health, so as to preclude any danger of communicating the disease to others by its transportation; and no local registrar, clerk or health officer or any other person shall give a permit for the removal of such body until he has received from the board of health of the city or from the board of aldermen or town commissioners, the county superintendent of the city, town or county where the death occurred, a certificate stating the cause of death and that the said body has been prepared in the manner set forth in this section; which certificate shall be delivered in duplicate to the agent or person who receives the body, and one copy shall be pasted on the box containing the corpse; said certificate shall be furnished in blank by the transportation company when no local board of health exists. During an epidemic of cholera all common carriers

shall so arrange their water-closets as to catch in water-tight receptacles the dejections of all persons using the same, and shall disinfect the said dejections in a manner satisfactory to the state board of health before emptying them.—Rev., 4459.

2376. Police officers of towns to provide against contagious diseases.—When an infectious disease shall be raging in any part of the state or in any part of the United States, the officers of police of any incorporated town, who may have well-founded apprehensions that their town is in danger of being visited by such disease, may take such precautionary measures and provide such penalties for the breach of them as may seem necessary and proper, the expense of which they are authorized to defray out of any money at the time in their town treasury; or, if that should not be in a situation to sustain the expense, to borrow such sum as may be necessary to defray the same, and afterwards to raise the amount by tax on the inhabitants of such town, over and above the ordinary taxes levied for the current expenses of the town.—Rev., 4460.

2377. Lots drained; penalty for neglect.—Every person, possessed of a lot in any seaport town, which from its low or sunken situation is liable to retain tide, or rain water, or on which cellars or foundations for buildings may be dug (whether a tenement be erected over the same or not), shall during the months of June, July, August, September and October, preserve and keep the said lot, cellars and foundations dry and free from stagnant or putrid waters and other filth; and any person offending herein shall forfeit and pay five dollars for the use of the town, for every week he shall suffer such stagnant or putrid water, or other filth, to remain therein. And if the said owner shall, notwithstanding the above provisions, neglect to remove such stagnant or putrid water or other filth, the commissioners of the town may employ any person, upon such terms as to them may seem reasonable and just, to remove such filth or stagnant or putrid waters; and the expense shall be considered as a further fine for not complying with this section, and shall be collected accordingly, and shall also be a lien upon the lot upon which the same has been expended.—Rev., 4461.

2378. Nuisances in seaport towns, what are.—All ponds of stagnant water, all cellars and foundations of houses, whose bottoms contain stagnant and putrid water; all dead and putrified animals lying about the docks, streets, lanes, alleys, vacant lots or yards; all privies that have no wells sunk under them; all slaughter houses; all docks whose bottoms are alternately wet and dry by the ebbing and flowing of the tide, all accumulations of vegetable and animal substances undergoing putrefactive fermentation, in any of the seaport towns of the state, are declared common nuisances, productive of offensive vapors and noxious exhalations, the causes of disease, and ought to be restrained, regulated and removed.—Rev., 4462.

2379. License of pharmacists displayed.—Every certificate or license to practice as a pharmacist, and every permit to a practicing physician to conduct a pharmacy or drug store in a village of not more than five hundred inhabitants, and every last renewal of such license or permit, shall be conspicuously exposed in the pharmacy or drug store or place of business of which the pharmacist, or other person to whom it is issued, is the owner or manager, or in which he is employed.—Rev., 4485.

2380. Person not licensed using title of pharmacist.—It shall be unlawful for any person not legally licensed as a pharmacist to take, use or exhibit the title of pharmacist or licensed or registered pharmacist, or the title druggist or apothecary, or any other title, name or description of like import.—Rev., 4486.

2381. Not to sell drugs without license.—It shall be unlawful for any person not licensed as a pharmacist within the meaning of this subchapter to conduct or manage any pharmacy, drug or chemical store, apothecary shop or other place of business for the retailing, compounding or dispensing of any drugs, chemicals or poison, or for the compounding of physicians' prescriptions, or to keep exposed for sale at retail any drugs, chemicals or poison, except as hereinafter provided, or for any person not licensed as a pharmacist within the meaning of this subchapter to compound, dispense or sell at retail any drug, chemical, poison or pharmaceutical preparation upon the prescription of a physician or otherwise, or to compound physicians' prescriptions except as an aid to and under the immediate supervision of a person licensed as a pharmacist under this subchapter. And it shall be unlawful for any owner or manager of a pharmacy or drug store or other place of business to cause or permit any other than a person licensed as a pharmacist to compound, dispense or sell at retail any drug, medicine or poison except as an aid to and under the immediate supervision of a person licensed as a pharmacist: Provided, however, that nothing in this section shall be construed to interfere with any legally registered practitioner of medicine in the compounding of his own prescriptions, nor with the exclusively wholesale business of any dealer who shall be licensed as a pharmacist or who shall keep in his employ at least one person who is licensed as a pharmacist, nor with the selling at retail of non-poisonous domestic remedies, nor with the sale of patent or proprietary preparations which do not contain poisonous ingredients, nor with the sale of poisonous substances which are sold exclusively for use in the arts or for use as insecticides when such substances are sold in unbroken packages bearing a label having plainly printed upon it the name of the contents, the word "Poison," the vignette of the skull and cross-bones, and the names of at least two readily obtainable antidotes: Provided, further, that in any village of not more than five hundred inhabitants the board of pharmacy may grant any legally registered practicing physician a permit to conduct a drug store or pharmacy in such village, which permit shall not be valid in any other village than the one for which it was granted, and shall cease and terminate when the population of the village for which such permit was granted shall become greater than five hundred: And provided further, that the board of pharmacy may, after due investigation, grant to any legally registered practicing physician in towns or villages of more than five hundred and not exceeding six hundred inhabitants a permit to conduct a drug store or pharmacy in such towns or villages subject to the provisions of this subchapter.—Rev., 4487.

2382. Sellers responsible for quality of drugs.—Every person who shall engage in the sale of drugs, chemicals and medicines he may sell or dispense, with the exception of those sold in the original packages of the manufacturers, and also those known as "patent or proprietary medicines."—Rev., 4488.

2383. Poisons, sale of, regulated.—It shall be unlawful for any persons to sell or deliver to any person any of the following described substances or any poisonous compound, combination or preparation thereof, to-wit: The compounds and salts of arsenic, antimony, lead, mercury, silver and zinc, oxalic and hydrocyanic acids and their salts, the concentrated mineral acids, carbolic acid, the essential oils of almonds, pennyroyal, tansy and savine, croton oil, creosote, chloroform, chloral hydrate, cantharides, or any aconite, belladonna, bitter almonds, colchicum cotton root, corium, cannabis indica, digitalis, hyoseymus, nux vomica, opium, ergot, cannabis, stramonius, or any of the poisonous alkaloids or alkaloidal salts or other poisonous princi-

ples derived from the foregoing, or cocaine or any other poisonous alkaloids or their salts, or any other virulent poisons, except in the manner following: It shall first be learned by due inquiry that the person to whom delivery is made is aware of the poisonous character of the substance, and that it is desired for a lawful purpose, and the box, bottle or other package shall be plainly labeled with the name of the substance, the word "Poison," and the name of the person or firm dispensing the substance. And before delivery is made of any of the following substances, to-wit, the compounds and salts of arsenic, antimony and mercury, hydrocyanic acid and its salts, strychnine and its salts, and the essential oil of bitter almonds, there shall be recorded in a book kept for the purpose the name of the article, the quantity delivered, the purpose for which it is required as represented by the purchaser, the date of delivery, the name and address of the purchaser, the name of the dispenser, which book shall be preserved for at least five years and shall at all times be open to the inspection of the proper officers of the law: Provided, however, that the foregoing provision shall not apply to articles dispensed upon the order of persons believed by the dispenser to be lawfully authorized practitioners of medicine or dentistry: And provided also, that the record of sale and delivery above mentioned shall not be required of manufacturers and wholesalers who shall sell any of the foregoing substances, when sold at wholesale, shall be properly labeled with the name of the substance, the word "Poison," and the name and address of the manufacturer or wholesaler: Provided further, that it shall not be necessary to place a poison label upon, or to record the delivery of, the sulphides of antimony or the dioxide or carbonate of zinc or lead, or of colors ground in oil and intended for use as paint, or paris green, when dispensed in the original package of the manufacturer or wholesaler, or calomel, paregoric or other preparations of opium containing less than two grains of opium to the fluid ounce, nor in the case of preparations containing any of the substances named in this section when in a single box, bottle or other package, or when the bulk of two fluid ounces or the weight of two avoirdupois ounces does not contain more than an adult medicinal dose of such poisonous substance.—Rev., 4489.

2384. Prescriptions preserved; copies furnished.—Every proprietor or manager of a drug store or pharmacy shall keep in his place of business a suitable book or file, in which shall be preserved for a period of not less than five years the original of every prescription compounded or dispensed at such drug store or pharmacy. Upon the request of the prescribing physician, or of the person for whom such prescription was compounded or dispensed, the proprietor or manager of such drug store or pharmacy shall furnish a true and correct copy of such prescription, and said book or file of original prescriptions shall at all times be open to the inspection and examination of duly authorized officers of the law or other persons authorized and directed by the board of pharmacy to make such inspection and examination.—Rev., 4490.

Note.—Violation of this subchapter Misdemeanors. See Crimes.

CHAPTER XXXV.

HUNTING.

1. Audubon Society.

2385. Incorporated.—J. Y. Joyner, T. Gilbert Pearson, R. H. Lewis, A. H. Boyden, H. H. Brimley, P. D. Gold, Jr., J. F. Jordan and R. N. Wilson are hereby created a body politic and corporate under the

name and style of the Audubon Society of North Carolina, and by that name and style they and their associates and successors shall have perpetual succession, with power to take and hold, either by gift, grant, purchase, devise, bequest or otherwise, any real or personal estate, not exceeding fifty thousand dollars in value, for the general use and advancement of the purposes of the said corporation, or for any special purpose, consistent with the charter; and such property shall be exempt from taxation; to make rules and by-laws; to have and to use a common seal, and to change the same at pleasure; and to do and perform all such acts and things as are or may become necessary for the advancement and furtherance of the corporation.—Rev., 1862.

2386. Officers of.—The officers of said corporation shall be a president, vice-president, secretary and treasurer, and such other officers as may be fixed by the by-laws.—Rev., 1863.

2387. Objects for which created.—The objects for which the corporation is formed are to promote among the citizens of North Carolina a better appreciation of the value of song and insectivorous birds to man and the state; to encourage parents and teachers to give instruction to children on the subject; to stimulate public sentiment against the destruction of wild birds and their eggs; to secure the enactment and enforcement of proper and necessary laws for the protection and preservation of birds and game of the state; to provide for the naming of special officers and investing them with necessary power, who shall work under the direction and control of the Audubon Society of North Carolina, looking to the rigid enforcement of the game and bird protective laws of the state; to distribute literature bearing on these topics among the members of the society and other persons, and to raise and provide funds for defraying the necessary expenses of the society in the accomplishment of the purposes herein named.—Rev., 1864.

2388. Hunters' license; form of, prescribed by.—The Audubon Society of North Carolina shall prescribe the form of license for non-resident hunters, and shall furnish to the clerks of the superior courts all licenses and other blanks required under the game laws, and shall also furnish to the clerks of the superior courts a bound book, for the purpose of keeping a record of all hunters' licenses that may be issued.—Rev., 1865.

2389. Grants certificates to take birds or eggs.—The Audubon Society of North Carolina may issue a certificate to any properly accredited persons of the age of twelve years and upward, permitting the holder thereof to collect birds, their nests or eggs for strictly scientific purposes; said certificate shall be in force only during the calendar year in which issued, and shall not be transferable. In order to obtain such certificates the applicant for same must present to the persons having authority to grant such certificates written testimonials from two well-known scientific men, certifying to the good character and fitness of said applicant to be intrusted with such privilege, and must pay the said society one dollar to defray the necessary expenses attending the granting of such certificate. On satisfactory proof that the holder of such certificate has killed any bird or taken the nests or eggs of any birds other than for scientific purposes, his certificate shall become void, and he shall be further subject for each offense to the penalty provided for such violation of the law.—Rev., 1866.

2390. Governor appoints treasurer of society and game wardens.—The governor, upon the recommendation of the Audubon Society of North Carolina, shall, from time to time appoint bird and game wardens, and the treasurer of the society, whose terms of office, unless otherwise provided for, shall be during good behaviour or until their successors are appointed. The governor shall issue to the treasurer

of the Audubon Society, and to each person appointed as a warden, a commission, and shall transmit such commission to the clerk's office of the superior court for the county from which the prospective treasurer or bird and game warden is appointed; and no tax or fee shall be charged or collected for said commission. Any of the said wardens may be removed by the governor upon proof satisfactory to him that they are not fit persons for said position. The compensation of said wardens shall be fixed and paid by the said society.—Rev., 1867.

2. Game Wardens.

2391. Oath of; bond; badge; act as constables.—Every person appointed as warden shall, before entering upon the duties of his office, take and subscribe before the clerk of the superior court of the county in which he resides an oath to perform the duties of said office, together with the other oaths prescribed for police officers, and execute a bond in the sum of one hundred dollars for the faithful discharge of his duties, and the said oath and bond shall be recorded by the clerk in his office, and the wardens so qualified shall possess and exercise all the powers and authority held and exercised by the constable at common law and under statutes of this state. The clerk shall not charge more than fifty cents for taking and recording said oath. The bird and game wardens, when acting in their official capacity, shall wear in plain view a metallic shield with the words "Bird and Game Warden" inscribed thereon.—Rev., 1868.

2392. Powers.—Duly appointed and qualified game and bird wardens shall, upon making an affidavit before a justice of the peace or any court of the state that there exists reasonable grounds to believe that any game or birds are in the possession of any common carrier in violation of the law, be entitled to a search warrant and to open, enter and examine all cars, warehouses and receptacles of common carriers in the state, where they have reason to believe any game or birds that have been taken or are held in violation of the law are to be found, and to seize such game or birds. It shall be the duty of said game and bird wardens to prosecute all persons or corporations having in their possession any bird or game contrary to the bird and game laws of this state. It shall be their duty to see that the bird and game laws are enforced and to obtain information as to all violation of said bird and game laws: Provided, that in Currituck county it shall be the duty of said wardens to also see to the enforcement of all laws relating to fishing in said county.—Rev., 1869.

2393. Birds seized by, sold.—Any bird or animal caught, taken, killed, shipped or received for shipment, had in possession or under control by any person or corporation contrary to the provisions of law, which may come into the possession of the bird and game warden, shall be sold at auction, and the bird and game warden disposing of the same shall issue a certificate to the purchaser certifying that the said birds or animals were legally obtained and possessed, and any one so acquiring said birds or animals can have the right to use them as if the same had been sold, killed or possessed in accordance with the law. The money received from the sale of such confiscated birds or game shall be forwarded by the game warden to the treasurer of the state and be placed to the account of the Bird and Game Fund.—Rev., 1870.

3. Bird and Game Fund.

2394. How paid out.—The funds received by the treasurer of the state from the license tax on non-resident hunters shall constitute a fund known as the Bird and Game Fund, which fund shall be paid out by the treasurer of the state on the order of the treasurer of the

Audubon Society of North Carolina, who shall make an annual report to the governor of the receipts and expenditures of the society for the year.—Rev., 1871.

IV. Non-resident Hunters.

2395. Procure license, effect of.—Any non-resident who desires to hunt birds or animals in any part of the state shall make application to the clerk of the superior court of any county, who shall issue such license upon the payment of a tax of ten dollars and the clerk's fee. The license shall expire on the termination of the hunting season as fixed for the several counties. The license shall be of such form as the Audubon Society of North Carolina may prescribe, and shall entitle the owner to hunt anywhere in the state except upon private property, which he shall not do without the written consent of the owner. The license may be revoked by the Audubon Society upon proof that the holder has hunted in violation of the law. No license shall be granted to any person whose license has been revoked, for a period of one year thereafter. Such license shall not authorize the holder to hunt in any county at any time or in any manner other than is provided by law for hunting in such county.—Rev., 1872.

2396. May take quail out of state.—Any person holding a hunter's license to hunt in North Carolina shall be permitted to take out of the state fifty partridges or quail, fifty beach birds or snipe, twelve grouse, or two wild turkeys in a season.—Rev., 1873.

2397. License, issued by clerk.—The clerk of the superior court shall issue hunters' licenses as provided for by law, and shall keep in a bound book a record of each license issued, and shall make a report on the first day of December of each year and at the close of the hunting season for their respective counties to the Audubon Society, on forms provided by said society, and shall at the same time transmit all funds received for such license to the treasurer of the state.—Rev., 1874.

Note.—For form of license, see s. 2388 infra.

5. Game Birds.

2398. What are.—Under the laws of this state, the following only shall be considered game birds: Loons, and grebes, swans, geese, brant; river, fish and sea ducks, rails, coots, marsh-hens and gallinules, plovers, shore and surf birds, snipe, woodcock, sandpipers, yellow legs, chewink or tohee and curlews, and the wild turkey, grouse, partridge, pheasant, quail, dove, robin and meadow lark.—Rev., 1875.

2399. Birds kept as pets, or for breeding.—It shall be lawful to keep any wild bird in a cage as a domestic pet, or for the purposes of breeding, raising and domesticating.—Rev., 1876.

2400. License tax on clubhouses, Dare county.—Every clubhouse, shooting lodge, or other place of resort for sportsmen, situated in that part of Dare county lying south of a line passing east and west, through the extreme northern end of Roanoke island, shall pay a license tax of twenty-five dollars a year, which said license shall entitle the members and guests of each club, lodge or resort to shoot wild fowl afloat within four miles of said clubhouse or lodge without further taxation.—Rev. 1877.

2401. Nonresidents shooting from blinds or batteries in Dare county, south of Roanoke island.—Nonresidents not exceeding two at the same time may shoot wild fowl in the waters of that part of Dare county lying south of a line passing east and west through the extreme northern end of Roanoke island, from a blind, battery, box, or float, where such blind, battery, box, or float is the property of a resident of Dare

county and a license tax of five dollars per annum has been paid on that blind, battery, box or float.—Rev., 1878.

2402. License tax on non-residents in Dare county.—Every non-resident of this state shall, before shooting any wild fowl in the waters of that part of Dare county lying north of a line passing east and west through the northern end of Roanoke island, from any blind, battery, box, float or raft pay a license tax of twenty-five dollars a year.—Rev., 1879.

2403. License taxes for hunting wild fowl in Dare county.—All license taxes imposed for hunting wild fowl in Dare county, or for lodges, club-houses or resorts for sportsmen, or upon boxes, batteries or floats, shall be paid to the clerk of the superior court, who shall issue the license. All such license taxes shall be by the clerk of the superior court paid over to the treasurer of the county for the benefit of the school fund.—Rev., 1880.

Note.—See important note at end of section 2412.

6. Close Season.

2404. Deer.—The close season of each year during which deer shall not be hunted with gun, chased with dogs, killed, trapped or destroyed shall, as to the several counties or parts of counties, be as follows:

Pender and all counties lying wholly west of the Wilmington and Weldon Railroad, except as hereinafter specifically provided, between the first day of February and the first day of October.

Bertie and Jones, between the first day of February and the first day of August.

Carver's and White Creek townships, Bladen county, from the thirtieth day of November to the first day of November.

Brunswick, Halifax, New Hanover and Warren, between the first day of January and the first day of September.

Burke, between the first day of January and the first day of October.

Caswell, until the first day of October, one thousand nine hundred and seven, and thereafter between the first day of February and the first day of October.

Carteret, between the first day of February and the first day of August.

Columbus, within one-half mile of Lake Waccamaw, between the first day of January and the first day of October.

Currituck, on the north side of Poplar Branch township, between the first day of March and the twentieth day of September.

Dare, between the first day of March and the fifteenth day of October.

Craven, between the first day of February and the first day of September.

McDowell, until the first day of October, one thousand nine hundred and seven, and thereafter between the first day of February and the first day of October.

Mitchell, between the first day of January and the first day of October, except Grassy Creek and Snow Creek townships, there between the fifteenth day of November and the fifteenth day of October next ensuing.

Montgomery (and Stanly?), until the first day of October, one thousand nine hundred and eleven, and thereafter between the first day of February and the first day of October.

New Hanover, between the first day of January and the first day of September.

Northampton, between the fifteenth day of February and the first day of November.

Onslow, in waters of New river or within one hundred yards thereof, all the year.

Person, Granville and Vance, between the fifteenth day of January and the first day of September, except that any person may kill them on his own premises at any season of the year when found destroying his crops.

Pamlico, between the first day of February and the fifteenth day of July.

Randolph, until the first day of October, one thousand nine hundred and eight, and thereafter between the first day of February and the first day of October.

Robeson, between the first day of January and the first day of November.

Tyrrell, between the first day of February and the fifteenth day of October.

Wilkes, until the first day of October, one thousand nine hundred and eight, and thereafter between the first day of February and the first day of October.

Yancey, from the thirtieth day of November to the first day of October.

Nash county, from the first day of November to the first day of September.

Hertford, from October the first to February the first.

Richmond, between the first day of January and the first day of September.—Rev., 1881; Laws 1907, cc. 602, 496, 447, 109, 423, 319.

2405. Squirrel.—The close season, or time in each year during which no squirrel shall be hunted, killed, or in any way captured, shall be, as to the counties hereinafter stated, as follows:

Beaufort, Chowan, Cleveland, Gates, Mecklenburg, Perquimans, Pitt and Hertford, from the first day of March to the first day of November.

Bertie and Martin, from the first day of March to the first day of October.

Craven and Jones, from the first day of March to the first day of October.

Franklin, from the first day of March to the first day of September.

Greene, from the first day of February to the first day of September.

Pasquotank, Pamlico and Tyrrell, from the first day of March to the first day of October.

Montgomery, from the first day of April to the first day of September.

Wake, Dare and Lenoir, from the first day of March to the first day of November.

Pender, from the first day of April to the first day of October.—Rev., 1882; Laws 1907, cc. 50, 111, 596, 423.

2406. Opossum.—The close season, or time in each year during which no opossum shall be shot, killed, hunted or in any way captured shall be, as to the counties of Alamance, Caswell, Chatham, Durham, Franklin, Graham, Guilford, Halifax, Mecklenburg, Moore, Orange, Pamlico, Wake and Warren, from the first day of February to the first day of October.

Greene, between the first day of February and the first day of September.

Lincoln and Harnett, between the first day of January and the first day of October.—Rev., 1883.

2407. Quail or partridges.—The close season, or time in each year during which quail and partridges shall not be shot, killed, wounded, or in any manner hunted, taken or captured, shall be from the first day of March to the first day of November, except as to those counties for which a different time is hereinafter stated, as follows:

Alexander, from the fifteenth day of January to the first day of December.

Buncombe, from the first day of February to the first day of December; and in Leicester township, until the second day of March, one

thousand nine hundred and eight, and thereafter from the first day of February to the first day of December.

Cherokee, Davidson, Duplin, Edgecombe, Franklin, Montgomery, Randolph and Wilson, from the first day of March to the fifteenth day of November.

Cabarrus, Clay, Davie, Rowan, Currituck, Camden, Pasquotank, Perquimans, from the first day of March to the first day of December.

Dare, Tyrrell and Vance, from the first day of March to the fifteenth day of October.

Gaston and Mecklenburg, from the tenth day of January to the first day of December; and in Cherryville, Crowder's Mountain and Gastonia townships, Gaston county, for five years from the fourth day of March, one thousand nine hundred and five.

Henderson, from the first day of April to the fifteenth day of November.

Hyde, from the twentieth day of March to the fifteenth day of October.

Iredell, Forsyth and Catawba, from the fifteenth day of February to the fifteenth day of November.

Cleveland, Lincoln and Surry, from the first day of February to the first day of December.

Nash, from the first day of February to the first day of November.

Northampton, from the fifteenth day of February to the first day of November.

Burke, from the first day of February to the first day of November.

Union, from the fifteenth day of January to the fifteenth day of December.

Swain, from the first day of March to the fifteenth day of November.

Cove Creek township, Watauga county, all the year.

Franklinville township, Randolph county, from the first day of January to the thirtieth day of November, both inclusive.

Lanesboro township, Anson county, from the twentieth day of January to the twentieth day of November.

Columbus, Graham, Jones and Onslow have no close season.

Durham county, from February first to November fifteenth.

Richmond, from the first day of April to the first day of November.—Rev., 1884; Laws 1907, cc. 449, 765, 986, 319, 54.

2408. Wild turkey.—The close season, or time in each year during which no wild turkey shall be shot, killed, wounded or in any manner hunted, taken or captured, shall be from the first day of March to the first day of November, except as to those counties as to which a different time is hereinafter stated, as follows:

Cabarrus, from the first day of March to the first day of December.

Cherokee, Davidson and Wilson, from the first day of March to the fifteenth day of November.

Clay, Randolph and Rowan, from the first day of February to the first day of December.

Davie, until the first day of March, one thousand nine hundred and eight, and thereafter from the first day of February to the first day of December.

Henderson, from the first day of April to the fifteenth day of November.

Northampton, from the fifteenth day of February to the first day of November.

Pamlico, from the first day of March to the first day of October.

Pender, from the first day of February to the first day of October.

Richmond, from the first day of January to the first day of October.

Union, from the fifteenth day of March to the fifteenth day of October.

Buncombe, from the first day of February to the first day of December.

Lanesboro township, Anson county, from the twentieth day of January to the twentieth day of November.

Carteret, Columbus, Dare, Graham, Jones, Onslow, Stanly, Swain and Tyrrell have no close season for wild turkeys.—Rev., 1885.

2409. Dove, robin and lark.—The close season, or time in each year during which no dove, robin or lark shall be shot, killed, wounded or in any manner hunted, taken or captured, shall be from the first day of March to the first day of November, except as to those counties as to which a different time is hereinafter stated, as follows:

Cabarrus and Cherokee, from the first day of March to the fifteenth day of November.

Davidson and Richmond, from the first day of April to the fifteenth day of October.

Davie, from the first day of March to the first day of December.

Edgecombe, from the first day of March to the fifteenth day of November.

Halifax and Warren, as to doves, from the first day of February to the first day of August.

Henderson, from the first day of April to the fifteenth day of November.

Mecklenburg, from the first day of February to the fifteenth day of November.

Northampton, from the fifteenth day of February to the first day of November.

Rowan, from the first day of March to the first day of December.

Union, from the fifteenth day of January to the fifteenth day of December.

Vance, from the fifteenth day of March to the fifteenth day of October.

Buncombe, as to doves, from the first day of February to the first day of December.

Lanesboro township, Anson county, as to doves, from the twentieth day of January to the twentieth day of November.

Carteret, Columbus, Duplin, Graham, Onslow, Moore, Swain and Wilson have no close season.—Rev., 1886.

2410. Pheasant.—The close season, or time in each year during which no pheasant shall be shot, killed, wounded or in any manner captured or taken, shall be as follows:

Buncombe county, from the first day of February to the fifteenth day of December.

Burke county, from the first day of February to the first day of November.

Cherokee county, from the first day of March to the fifteenth day of November.

Clay county, from the first day of March to the first day of December.

Henderson county, from the first day of April to the first day of November.

Macon county, from the first day of March to the first day of November.

Randolph county, from the fifteenth day of December to the fourteenth day of November next, for a period of five years from February, one thousand nine hundred and five.

Swain county, from the first day of January to the twentieth day of November.

Rowan county, from the first day of February to the first day of December.—Rev., 1887.

Note.—Protected in Anson county for five years from January 29, 1907.—Laws 1907, c. 58.
In Ashe county for four years from March 15, 1907.—Laws 1907, c. 201. (Same as to grouse.)

2411. Woodcock.—The close season, or time in each year during which no woodcock shall be hunted, killed or in any way taken or captured, shall be as follows:

Craven and Jones, from the first day of February to the first day of November.

Edgecombe, from the first day of March to the first day of November.

Brunswick and New Hanover, from the first day of January to the first day of September.

Cherokee, from the first day of March to the first day of November.

Henderson, all the year.

Randolph, from the first day of March to the first day of November.

Rowan, from the first day of February to the first day of December.—Rev., 1888.

2412. Snipe and other game or shore birds.—The close season, or time in each year during which no snipe, marsh hen, curlew and other shore birds and game birds shall be hunted, killed or in any way taken, shall be as follows:

Lanesboro township, Anson county, as to snipe and other game birds, from the twentieth day of January to the twentieth day of November.

Edgecombe, any game bird, not otherwise regulated, from the first day of March to the fifteenth day of November.

Granville, any game bird from the first day of March to the first day of November.

Craven and Jones, wild duck and other water fowl, from the first day of March to the first day of November.

Brunswick and New Hanover, snipe and wild ducks of all kinds, from the first day of March to the first day of September.

Halifax and Warren, as to snipe, between May the first and the first day of February.

Buncombe, as to grouse, from the first day of February to the first day of December.

Henderson, all the year, except snipe as to which there is no close season.

Cherokee, from the first day of March to the fifteenth day of November.—Rev., 1889.

Note.—Some local game laws are omitted, and some which do not expressly amend the preceding sections do so in effect. Attention is called to the following acts:

Ashe: Deer, pheasant, grouse.—Laws 1907, c. 358.

Beaufort: Deer and duck.—Laws 1907, c. 384.

Bertie: Deer.—Laws 1907, c. 45.

Brunswick: Deer.—Laws 1907, c. 698.

Buncombe: Quail, partridge, pheasant, wild turkey, grouse, dove, fish.—Laws 1907, c. 877.

Burke: Quail, pheasant, partridge, dove, robin, lark, wild turkey.—Laws 1907, c. 652.

Foxes.—Laws 1907, c. 388.

Cabarrus: Partridge, quail.—Laws 1907, c. 586.

Carteret: Squirrels, marsh-hens, wild fowl.—Laws 1907, c. 895.

Caswell: Deer.—Laws 1907, c. 306.

Chatham: Deer, pheasants, grouse.—Laws 1907, c. 858.

Cherokee: Deer, partridge, pheasant, quail, dove, robin, snipe, woodcock, fish.—Laws 1907, c. 452.

Clay: Partridge, quail, birds.—Laws 1907, c. 51.

Cleveland: Foxes.—Laws 1907, c. 388.

Columbus: Deer, partridge, quail, dove, wild turkey, fur-bearing animals.—Laws 1907, c. 505.

Craven: Deer, ducks, geese, wild fowl.—Laws 1907, c. 321.

Currituck: Wild fowl.—Laws 1907, cc. 376, 233.

Davidson: Deer, pheasants, grouse.—Laws 1907, c. 358. Quail, partridge.—Laws 1907, c. 422.

Edgecombe: Dove.—Laws 1907, c. 289. Squirrels.—Laws 1907, c. 283. Partridge, quail, wild turkey, mocking bird, blue bird.—Laws 1907, c. 823.

Forsyth: Deer, pheasant, grouse.—Laws 1907, c. 358.

Gaston: Quail, partridge.—Laws 1907, c. 417.

Guilford: Partridge, wild turkey, dove, robin, meadow-lark, wild duck, game birds.—Laws 1907, c. 345. Deer, pheasants, grouse.—Laws 1907, c. 358.

Iredell.—Quail.—Laws 1907, c. 699.

Lenoir: Squirrels.—Laws 1907, cc. 327, 111.

Lincoln: Quail.—Laws 1907, c. 733.

McDowell: Fish, partridge, quail, pheasant, raccoon, opossum, trout.—Laws 1907, c. 886.

Madison: Quail, partridge, pheasant, wild turkey, grouse, dove.—Laws 1907, c. 104.

Mecklenburg: Quail, partridge, game.—Laws 1907, c. 592.

Mitchell: Gray squirrel, opossum, groundhog, raccoon, partridge, pheasant, wild turkey, dove, robin, lark, woodcock, snipe, fish.—Laws 1907, c. 494. Deer.—Laws 1907, c. 242.

Montgomery: Birds, turkeys, quail, partridge, pheasant, wild turkey, grouse, dove.—Laws 1907, c. 689. Deer, pheasants, grouse.—Laws 1907, c. 358.
 Moore: Deer, pheasants, grouse.—Laws 1907, c. 358.
 Nash.—Partridge, quail, wild turkey, mocking-bird, blue-bird.—Laws 1907, c. 823. Deer.—Laws 1907, c. 109.
 Northampton: Deer.—Laws 1907, c. 450.
 Randolph: Laws 1907, cc. 444, 445. Deer, pheasant, grouse.—Laws 1907, c. 358.
 Richmond: Deer, pheasant, grouse.—Laws 1907, c. 358.
 Rockingham: Deer, pheasant, grouse.—Laws 1907, c. 358.
 Rutherford: Pheasants.—Laws 1907, c. 825.
 Scotland: Deer, pheasant, grouse.—Laws 1907, c. 358.
 Stanly: Deer, pheasant, grouse.—Laws 1907, c. 358.
 Stokes: Partridge, quail, wild turkey, game birds.—Laws 1907, c. 610. Deer, pheasant, grouse.—Laws 1907, c. 358.
 Surry: Deer, pheasant, grouse.—Laws 1907, c. 358.
 Transylvania: Pheasants, grouse.—Laws 1907, c. 679. Squirrels, quail, partridge, deer.—Laws 1907, c. 842.
 Tyrrell: Deer.—Laws 1907, c. 622.
 Union: Lark, dove, wild turkey, quail, partridge.—Laws 1907, c. 703.
 Wake.—Squirrel law repealed.—Laws 1907, c. 105.
 Watauga: Pheasant, grouse, partridge, quail.—Laws 1907, c. 851. Deer, pheasant, grouse.—Laws 1907, c. 358.
 Wilkes: Deer, pheasant, grouse.—Laws 1907, c. 358.
 Yadkin: Partridge, quail.—Laws 1907, c. 607. Deer, pheasant, grouse.—Laws 1907, c. 358.

CHAPTER XXXVI.

IDIOTS, INEBRIATES AND LUNATICS.

1. Guardian of.

2413. Inquisition; guardian appointed.—Any person, in behalf of one who is deemed an idiot, inebriate or lunatic, or incompetent from want of understanding to manage his own affairs by reason of the excessive use of intoxicating drinks, or other cause, may file a petition before the clerk of the superior court of the county where such supposed idiot, inebriate or lunatic resides, setting forth the facts, duly verified by the oath of the petitioner; whereupon such clerk shall issue an order, upon notice to the supposed idiot, inebriate or lunatic, to the sheriff of the county, commanding him to summon a jury of twelve men to inquire into the state of such supposed idiot, inebriate or lunatic. The jury shall make return of their proceedings under their hands to the clerk, who shall file and record the same; and he shall proceed to appoint a guardian of any person so found to be an idiot, inebriate, lunatic or incompetent person by inquisition of a jury, as in cases of orphans.—Rev., 1890.

Note.—See Guardian, s. 2265 *infra*.

An inquisition which simply finds the party "to be incapable of managing his affairs" is defective and void. It should state why he is incapable.—*Arrington v. Short*, 8—11.

It is good cause for setting aside an inquisition if the alleged lunatic was denied the right of being present at the inquest, but such inquisition is not void because the alleged lunatic was not present at the time of taking inquest, not being notified.—*Betha v. McLennon*, 23—523.

2414. Guardian appointed on certificate from hospital for insane.—If any person be confined in any hospital for insane persons, in any state, territorial or government asylum or hospital in this state or any other state or territory or in the District of Columbia, the certificate of the superintendent of such hospital declaring such person to be of insane mind and memory, which certificate shall be sworn to and subscribed before the clerk of the superior court, or any notary public or the clerk of any court of record, of the county in which such hospital is situated, and certified under the seal of court, shall be sufficient evidence to authorize the clerk to appoint a guardian for such idiot, lunatic or insane person.—Rev., 1891; Laws 1907, c. 232.

2415. Inebriates defined.—Any person who habitually, whether continuously or periodically, indulges in the use of intoxicating liquors,

narcotics or drugs to such an extent as to stupefy his mind and to render him incompetent to transact ordinary business with safety to his estate, or who shall render himself, by reason of the use of intoxicating liquors, narcotics or drugs, dangerous to the person or property, or who shall, by the frequent use of liquor, narcotics or drugs, render himself cruel and intolerable to his family, or shall fail from such cause to provide his family with reasonable necessities of life, shall be deemed an inebriate: Provided, the habit of so indulging in such use shall have been at the time of inquisition of at least one year's standing.—Rev., 1892.

Note.—For rules for admission into hospitals, see Hospitals for Insane.

2416. Reformation and restoration to sanity or sobriety.—Whenever an insane person or inebriate shall become of sound mind and memory, or shall become competent to manage his property, he shall be authorized to manage, sell and control all his property in as full and ample a manner as he could do before he became insane or inebriate, and a petition in behalf of such person may be filed before the clerk of the superior court of the county of his residence, setting forth the facts duly verified by the oath of the petitioner, whereupon the clerk shall issue an order, upon notice to the person alleged to be no longer insane or inebriate, to the sheriff of the county, commanding him to summon a jury of six freeholders to inquire into the sanity of the said alleged sane person, formerly a lunatic, or the sobriety of such alleged restored person, formerly an inebriate. The jury shall make return of their proceedings under their hands to the clerk, who shall file and record the same, and if the jury find that the person whose mental or physical condition inquired of is sane and of sound mind and memory, or is no longer an inebriate, as the case may be, the said person shall be authorized to manage his affairs, make contracts and sell his property, both real and personal, as if he had never been insane or inebriate.—Rev., 1893.

2417. Estates without guardian managed by clerk.—Whenever any person is declared to be of nonsane mind or inebriate, and for whom no suitable person will act as guardian, the clerk shall secure the estate of such person according to the law relating to orphans whose guardians have been removed.—Rev., 1894.

2418. Allowance to abandoned feme covert lunatic.—Whenever any feme covert lunatic shall be abandoned by her husband, she may, by her guardian, or next friend, in case there be no guardian, apply to the clerk of the superior court for support and maintenance, which the clerk may decree as in cases of alimony, out of any property or estate of her husband.—Rev., 1895.

Note.—See Divorce and Alimony.

Deemed to have pleaded statutes of limitation, see s. 361 of the Revisal.

2. Sales of Estates.

2419. Clerk may order sale or renting.—Whenever it shall appear to any clerk of the superior court by report of the guardian of any idiot, inebriate or lunatic, that his personal estate has been exhausted, or is insufficient for his support, and that he is likely to become chargeable on the county, the clerk may make an order for the sale or renting of his personal or real estate, or any part thereof, in such manner and upon such terms as he may deem advisable. Such order shall specify particularly the property thus to be disposed of, with the terms of renting or sale, and shall be entered at length on the records of the court; and all sales and rentings made under this section shall be valid to convey the interest and estate directed to be sold, and the title thereof shall be conveyed by such person as the clerk may appoint

on confirming the sale; or the clerk may direct the guardian to file his petition for such purpose.—Rev., 1896.

2420. How and for what purpose sold; parties; disposition of proceeds.—Whenever it shall appear to the clerk, upon the petition of the guardian of any idiot, inebriate or lunatic, that a sale of any part of his real or personal estate is necessary for his maintenance, or for the discharge of debts unavoidably incurred for his maintenance, or whenever the clerk shall be satisfied that the interest of the idiot, inebriate or lunatic would be materially and essentially promoted by the sale of any part of such estate; or whenever any part of his real estate is required for public purposes, the clerk may order a sale thereof to be made by such person, in such way and on such terms as he shall adjudge: Provided, that the clerk, if it be deemed proper, may direct to be made parties to such petition the next of kin or presumptive heirs of such nonsane person or inebriate. And if on the hearing the clerk shall order such sale, the same shall be made and the proceeds applied and secured, and shall descend and be distributed in like manner as is provided for the sale of infants' estates decreed in like cases to be sold on application of their guardians, as directed in the chapter entitled Guardian.—Rev., 1897.

The guardian of an infant or lunatic can not, without the permission of the court, exceed the annual income of the estate in expenditures for the ward.—*Patton v. Thompson*, 55—411.

A guardian of a lunatic has no power to sell or apply any part of the estate of his ward to the discharge of debts pre-existing the inquisition of lunacy, except by order of the superior court. The probate court has no power to order the payment of such debts.—*Adams v. Thomas*, 81—296.

2421. Land of wife of lunatic, how sold.—Where the wife of a lunatic owns real estate in her own right the sale of which will promote her interest, a sale of the same may be made upon the order of the clerk of the superior court of the county where the land lies, upon the petition by the wife of said lunatic and the guardian of the lunatic husband, and the proceeds of said sale shall be paid to the wife of said lunatic.—Rev., 1898.

3. Surplus Income.

2422. Of mother used for children's support.—When a father dies leaving his surviving minor children and a widow who is the mother of such children, but leaving no sufficient estate for the support and maintenance and education of such minor children, and the mother shall be or become insane and be so declared according to law, and such insanity shall continue for twelve months thereafter, and she shall have an estate which shall be placed in the hands of a guardian or other person, as provided by law, the estate of such insane mother shall in such cases as are provided for in the succeeding section be made liable for the support, maintenance and education of the class of persons mentioned in said section to the same extent, in the same manner and under the same rules and regulations as applies to estates of fathers thereunder.—Rev., 1899.

2423. When advanced to next of kin.—Whenever any nonsane person, of full age, and not having made a valid will, shall have children or grandchildren (such grandchildren being the issue of a deceased child, and shall be possessed of an estate, real or personal, whose annual income shall be more than sufficient to abundantly and amply support himself, and to support, maintain and educate the members of his family, with all the necessaries and suitable comforts of life, it may be lawful for the clerk of the superior court for the county in which such person shall have his residence to order from time to time, and so often as may be judged expedient, that fit and proper advancements be made, out of the surplus of such income, to any such

child or grandchild, not being a member of his family and entitled to be supported, educated and maintained out of the estate of such person.—Rev., 1900.

2424. For what purpose and to whom advanced.—Such advancements shall be ordered only for the better promotion in life of such as are of age, or married, and for the maintenance, support and education of such as are under the age of twenty-one years and unmarried; and in all cases the sums ordered shall be paid to such persons as, in the opinion of the clerk, will most effectually execute the purpose of the advancement; and in case the child, or grandchild, be a feme covert, the sum advanced shall be paid or secured to her for her sole and separate use.—Rev., 1901.

2425. Distributees, parties.—In every application for such advancements, the guardian of the nonsane person, and all such other persons, shall be parties, as would at that time be entitled to a distributive share of his estate, if he were then dead.—Rev., 1902.

2426. Advancements, equal; accounted for, when.—The clerk, in ordering such advancements, shall, as far as practicable, so order the same, as that, on the death of the nonsane person, his estate shall be distributed among his distributees in the same equal manner as if the advancements had been made by the person himself; and on his death, every sum advanced to a child, or grandchild, shall be an advancement, and shall bear interest from the time it may be received.—Rev., 1903.

2427. Clerk may select those to advance.—When the surplus aforesaid shall not be sufficient to make distribution among all the parties, the clerk may select and decree advancements to such of them as may most need the same, and may apportion the sum decreed in such amounts as shall be expedient and proper.—Rev., 1904.

2428. Secured against waste.—It shall be the duty of the clerk to withhold advancements from such persons as will probably waste them, or so to secure the same when they may have families, that it may be applied to their support and comfort, but any sum so advanced shall be regarded as an advancement to such persons.—Rev., 1905.

2429. Appeal; removal to superior court.—Any person made a party may appeal from any order of the clerk; or may, when the pleadings are finished, require that all further proceedings shall be had in the superior court.—Rev., 1906.

2430. Advancements only when insanity permanent.—No such application shall be allowed under this chapter but in cases of such permanent and continued insanity, as that the nonsane person shall be judged by the clerk to be incapable, notwithstanding any lucid intervals, to make advancements with prudence and discretion.—Rev., 1907.

2431. Decree suspended when sane.—Upon such insane person being restored to sanity, every order made for advancements shall cease to be further executed, and his estate shall be discharged of the same.—Rev., 1908.

2432. Idiots not admitted to hospitals for insane.—No idiot shall be committed to any hospital, and for the purpose of this chapter an idiot is defined to be a person born deficient in mind.—Rev., 4572.

2433. Priority given to indigent when private nurses provided.—In the admission of patients to any state hospital, priority of admission shall be given to the indigent insane: Provided, that the boards of directors may regulate admissions, having in view the curability of patients, the welfare of their institutions and the exigencies of particular cases: Provided further, that said boards may, if there be

sufficient room, admit other than indigent patients. If any inmate of any state hospital shall require private apartments, extras or private nurses, the directors, if practicable, shall provide the same at a fair price to be paid by said patient.—Rev., 4573.

2434. Settlement of patient; how determined.—For the purposes of this chapter the settlement of every person admitted to a state hospital as insane shall be in the county where the actual place of his residence at his admission may be situated, when such settlement comes in question, but no person can have a settlement in any county in this state unless he is a bona fide citizen and resident of this state, and who was so before mental disease became manifest.—Rev., 4574.

2435. Affidavit of insanity made to procure.—For admission into a state hospital, the following proceedings shall be had: Some respectable citizen, residing in the county of the alleged insane person, shall make before and file with the clerk of the superior court of the county, an affidavit in writing, which shall be substantially in the following form:

State of North Carolina,
.....County.

The undersigned, residing in said county, makes oath that he has carefully examined and believes him to be an insane person, and to be, in the opinion of the undersigned, a fit subject for admission into a hospital for the insane.

Dated day of, A. D.

....., Affiant.

Sworn and subscribed before me, Clerk Superior Court.
—Rev., 4575.

2436. Affidavit made; clerk issues order to bring party up for examination.—Whereupon, unless the person in whose care or custody the insane person is, will agree to bring him before said clerk without a warrant, or unless the clerk shall be of the opinion that it will be injurious to the insane person to be brought before him, the clerk shall issue a precept, directed to the sheriff or other lawful officer, substantially in the following form:

State of North Carolina.

To the Sheriff or other lawful officer of county—Greeting:

Whereas, information on oath, has been laid before me that is insane, you are hereby commanded to bring him before me within the next ten days that necessary proceedings may be had thereon. Given under my hand day of, A. D.

....., Clerk Superior Court.
—Rev., 4576.

2437. Clerk causes examination to be made; who makes.—If the alleged insane person be confined in jail otherwise than for crime, the sheriff shall remove him from the jail upon the order from the clerk. Upon the bringing of the alleged insane person before the clerk by his friends, or upon the return of the precept with the body of the insane person, the clerk shall call to his assistance the county physician of said county, or some other licensed and reputable physician, resident of this state, and shall proceed to examine into the condition of mind of the alleged insane person; he shall take testimony of at least one licensed physician, resident of this state, and if possible, a member of the family, or some friend or person acquainted with the alleged insane person, who has had opportunities to observe him after such insanity is said to have begun.—Rev., 4577.

2438. Clerk discharges, when; commits to hospital, when; bond for safe keeping of insane party.—If the clerk, after his examination of the alleged insane person, and the hearing of the testimony as

aforesaid, shall decide that such person is sane, he shall forthwith discharge him. If he shall decide that such person is insane, and some friend, as he may do, will not become bound with good security, in an amount to be fixed by the clerk, to restrain him from committing injuries, and to keep, support and take care of him until the cause for confinement shall cease, he shall direct such insane person to be removed to the proper hospital as a patient, and to that end he shall direct a warrant to the sheriff, or other officer, and at the same time shall transmit to the proper board of directors the examination of the witnesses, and the statement of such facts as he shall deem pertinent to the subject matter, which warrant shall be substantially as follows:

State of North Carolina.

To the Sheriff or other lawful officer of county—Greeting:

Whereas, it has been made to satisfactorily appear to me, clerk of the superior court of said county, that, a citizen of the state, is an insane person, that he has a legal settlement in said county, and is a fit subject for a state hospital, and that his being at large is injurious to himself and disadvantageous if not dangerous to the community: you are hereby commanded to take the said, and convey him to the proper hospital, and there deliver him to the superintendent thereof for safe keeping.

Given under my hand, this day of, A. D.

.....Clerk Superior Court.

—Rev., 4578.

2439. Clerk examines party at home, when.—If the clerk of the court shall be of the opinion that it will be injurious to the alleged insane person to be brought before him, the clerk shall proceed to the residence or habitation of said person and take the examination there.—Rev., 4579.

2440. Justice of the peace acts, when; procedure.—In a case of emergency, when for any reason the clerk of the court can not go or is absent from the county, then any justice of the peace is hereby authorized to proceed in like manner by taking the testimony of the physician and other witnesses, as is before provided for in this section, and report the same to the clerk. If the clerk is satisfied that the alleged insane person is a fit subject for a hospital for the insane, he shall issue an order for his commitment. In cases of great emergency or inconvenience, the said justice may commit a patient to a hospital, and the superintendent is authorized to receive him, but the justice shall procure an order from the clerk to be forwarded to the superintendent within thirty days. The following fees shall be allowed to the officers who make the examination and they shall be paid by the county in which the alleged insane person is settled: to the clerk or justice who makes the examination, two dollars, and if the clerk goes to the home of the insane person, he shall be entitled, in addition to this sum, to five cents a mile each way. This shall cover his entire cost in taking the examination, and making out the necessary papers.—Rev., 4580.

2441. Fees of physician for examination.—The physician called in the absence of the county physician, shall be entitled to two dollars with mileage. The sheriff shall be entitled to such fees as are now allowed by law for the service of process of similar character.

The county physician, being a salaried officer, is not allowed any fee for his services in this examination.—Rev., 4581.

2442. Persons becoming suddenly violently insane; who may commit.—Whenever any citizen or resident of this state becomes suddenly or violently insane, in some county other than that of his settlement, the proper authorities, as hereinbefore provided, of any county in which

he shall be, shall have authority to examine him, and if necessary commit him to the hospital to which he would be sent had he been committed from the county of his own settlement.—Rev., 4582.

2443. County of settlement pays expense of commitment of person; penalty.—Immediately upon the commitment to a hospital of any such person, a transcript of the proceedings shall be sent to the clerk of the county in which he is settled, and that county shall pay over to that county from which he was committed, all the costs of the examination and commitment, and if the board of commissioners of the county of the settlement shall fail to pay all proper expense of said proceedings within sixty days after the claim shall have been presented, they shall forfeit and pay to the county which committed the insane person the sum of two hundred and fifty dollars, to be recovered by the commissioners of that county in a civil action brought in the superior court of that county from which the patient was committed to the hospital, against the commissioners of the other county.—Rev., 4583.

2444. Citizen of another state adjudged insane; procedure.—If any person not a citizen or resident of this state, but a citizen and resident of another state of the United States, shall be ascertained to be insane, the clerk of the court shall immediately notify the governor of the state of which the insane person is a citizen, of the facts and circumstances by letter (or telegraphic message if he thinks proper), and for a reasonable length of time the insane person shall be kept confined or restrained in said county, but shall not be committed to any state hospital, and if the state of his citizenship shall not provide for the removal from this state to his proper state of the insane person within a reasonable time, the county commissioners of the county in which he shall have been ascertained to be an insane person, shall cause him to be conveyed to the state of which he is a citizen and delivered there to the sheriff of his county or to the superintendent of any state hospital. The cost of such proceedings and conveyance away from this state shall be borne by the county in which the person shall have been adjudged to be insane.—Rev., 4584.

2445. Alien resident adjudged insane; procedure.—If any person, not a citizen of the United States, shall be ascertained to be insane, the clerk of the court shall immediately notify the governor of this state of the name of the insane person, the country of which he is a citizen, and his place of residence in said country, if the same can be ascertained, and such other facts in the case as he may obtain, together with a copy of the examination; and the governor shall transmit said information and examination to the secretary of state at Washington, D. C., with the request that he inform the minister resident or plenipotentiary of the country of which the insane person is supposed to be a citizen.—Rev., 4585.

2446. Clerk to keep record; what to record; fees.—The clerk will keep a record of all examinations of persons alleged to be insane, and he shall record in such record a brief summary of the proceedings and of his findings, and whenever a justice of the peace shall transmit to the clerk a report of his proceedings (when he shall have examined a person under the powers granted under this chapter), the clerk shall make a record of his proceedings, and for recording the justice's proceedings he shall be entitled to a fee of twenty-five cents, to be paid by the county aforesaid, and he shall keep a record of all probations and discharges provided for in section of this act.—Rev., 4586.

2447. None but bona fide residents admitted to hospitals.—No clerk of the court or justice of the peace shall commit to a hospital any person who is not a bona fide citizen and resident of this state; and no

person who shall have removed into this state from another state while insane, shall be deemed a resident or citizen of this state, and no length of residence in this state of a person who was insane at the time he moved into this state shall be sufficient to make that person a citizen or resident of North Carolina within the meaning of this law.—Rev., 4587.

2448. In examinations findings as to residences made and reported to superintendents.—In every examination of an alleged insane person it shall be the duty of the clerk or justice of the peace to particularly inquire whether the alleged insane person is a resident of this state, as hereinbefore set forth, and he shall state his findings upon the subject in his report to the superintendent of the hospital. If it is not possible to ascertain the legal residence of the alleged insane person, and the clerk or justice of the peace shall be of the opinion that the insane person is a resident of this state, within the meaning of this law, he shall state that he was unable to ascertain the legal residence of the insane person, and shall commit him to the hospital of his district.—Rev., 4588.

2449. Questions answered upon examination; certified to superintendent.—The following questions with their respective answers, by at least one licensed physician, resident of this state, and such other competent witnesses as the clerk or justice shall determine, duly sworn and subscribed by them, and so certified by said clerk or justice, shall be transmitted with the other papers to the superintendent of the proper hospital, to be reported as soon as practicable to the board of directors. Pending the consideration of the application by the board of directors, the patient shall remain in the custody of the officer or such person as the clerk may designate until it can be ascertained if there is room for the patient at the hospital.

Question 1. What is the name of the patient?

Answer.

Question 2. Is white or colored?

Answer.

Question 3. What is age?

Answer.

Question 4. What is the occupation of patient?

Answer.

Question 5. Is married or single; and if married, for how many years?

Answer.

Question 6. If patient be married woman, state maiden name.

Answer.

Question 7. Has any education; if so, how much?

Answer.

Question 8. Where was born?

Answer.

Question 9. How many attacks of mental disease has the patient had?

Answer.

Question 10. What is the supposed cause of the present attack of insanity?

Answer.

Question 11. Has been subject to epilepsy?

Answer.

Question 12. How long has been insane? (Count from the first symptoms of present attack, and give all known symptoms from that time to this date.)

Answer.

Question 13. In what way is the disease exhibited?

Answer.

Question 14. Has any delusions? If so, what are they?

Answer.

Question 15. Is destructive to clothing or furniture?

Answer.

Question 16. Is filthy or indecent?

Answer.

Question 17. Has the patient manifested any propensity to injureself or others? If so, in what way and how often?

Answer.

Question 18. Has ever threatened suicide?

Answer.

Question 19. Has ever attempted suicide?

Answer.

Question 20. Has ever threatened homicide?

Answer.

Question 21. Has ever attempted to commit homicide?

Answer.

Question 22. Has any family? And if so, what persons compose it? Age of youngest child?

Answer.

Question 23. Are any of them insane, and what is the character of such insanity?

Answer.

Question 24. Are parents of the insane person related by blood? If so, what is the degree of relationship?

Answer.

Question 25. Have any of ancestors been insane? If so, state what ancestors, and what was the character of their insanity?

Answer.

Question 26. Are any of relatives deaf, dumb, blind, idiotic, epileptic or paralyzed? If so, state relationship.

Answer.

Question 27. What isbodily condition? Chronic or acute physical disease. State the diseases and stage of disease (wounds, bruises, rupture, pregnancy).

Answer.

Question 28. Has any medical treatment been pursued? If so, what kind and by whom?

Answer.

Question 29. Is in jail?

Answer.

Question 30. Is in poor house?

Answer.

Question 31. Is under any forcible restraint? If so, what?

Answer.

Question 32. Has patient any property? If so, state in what property consists, and what is the value thereof?

Answer.

Question 33. Has the patient received any aid from county? If so, what?

Answer.

Question 34. Give name and post-office of the nearest relative with whom the superintendent of the hospital can correspond, as circumstances require, for the benefit of the patient.

Answer.

Name

Relationship

P. O. address

Question 35. Give any information in your possession not embraced in the above questions, which may throw light on the mental or physical condition of the patient?

Answer.

....., M. D.

.....
.....

Witnesses.

State of North Carolina,
..... County.

Before officer, duly authorized to administer an oath, this day of, A. D., came, M. D., persons known to be credible and reliable witnesses, and make oath that the foregoing answers are true to the best of their knowledge and belief.

.....
.....

—Rev., 4589.

2450. Superintendent in doubt as to; procedure.—Whenever any insane person shall be conveyed to any hospital and the superintendent is in doubt as to the propriety of his admission, he may convene any three of the board of directors of his hospital, who shall constitute a board for the purpose of examining and deciding if such person is a proper subject for admission; and if a majority of such board so decide, such person shall be received into said hospital; but a like board may at any time thereafter deliver said insane person to any friend who will become bound with good surety, to restrain him from committing injuries, and to keep, maintain, and take care of him, in the same manner as he might have become bound under the authority of the clerk of the court.—Rev., 4590.

2451. Patient exposed to disease, superintendent may refuse to receive.—The superintendent of the hospital may refuse to receive into his institution a patient when he shall have reliable information that the patient has recently been exposed to infectious or contagious diseases, and there is danger of contagion and infection being conveyed by the patient or where the patient comes from a quarantined community. Whenever a patient is rejected because of any of these reasons, the superintendent shall make a record of the application, and as soon as, in his opinion, the danger shall have been removed, he shall notify the sheriff of the county, and admit the patient into his hospital.—Rev., 4591.

2452. Patient released on bond; terms not complied with, patient returned.—Whenever it shall be made to appear to the clerk of the superior court of the county of settlement of an insane person released on bond, that the conditions of the bond are not faithfully complied with, said insane person shall be sent back to the proper hospital by him, unless some other responsible and discreet friend will undertake to fulfill the duties of said obligation and whenever said insane person shall be sent back, he shall not be delivered on any new bond of the defaulting obligor.—Rev., 4592.

2453. Upon patient's own application.—Any person believing himself to be of unsound mind, or threatened with insanity may voluntarily commit himself to the proper hospital. The application for commitment shall be in the form following:

STATE OF NORTH CAROLINA,

County of

I,, a resident of County, North Carolina, being of mind capable of signifying my wishes, do hereby solicit ad-

mission as a patient in the state hospital at for such a period of time as the board of directors and the superintendent may deem necessary. And I agree in all respects to conform to the rules and regulations of said institution during the period which shall be prescribed by the superintendent and board of directors.

Attest:

This application shall be accompanied by the certificate of a licensed physician, which certificate shall state that in the opinion of the physician, the applicant is a fit subject for admission into a hospital, and that he recommends his admission. The certificate of the clerk of the superior court need not accompany this application. The superintendent may, if he thinks it a proper application, receive the patient thus voluntarily committed and treat him until the next meeting of the board of directors, or of the executive committee, and shall report the application and admission to the first meeting of either of said boards, and if either of said boards approve said admission, the patient shall be considered as having been regularly committed, and shall in all respects be treated as such. But no report need be made to the clerk of the court of his county of settlement. The superintendent and board of directors shall have the same control over patients who commit themselves voluntarily, as they have over those committed under the regular proceedings hereinbefore provided. And no voluntary patient shall be entitled to a discharge until he shall have given the superintendent ten days' notice of his desire to be discharged.—Rev., 4593.

2454. Insane person committed to jail, when.—When any person is found to be insane under any of the provisions of this chapter, and he can not be immediately admitted to the appropriated hospital, and such person is also found to be subject to such acts of violence as threaten injury to himself and danger to the community, and he can not otherwise be properly restrained, he may be temporarily committed to the county jail until a more suitable provision can be made for his case.—Rev., 4594.

2455. County commissioners may discharge insane person, when.—It shall be the duty of the board of county commissioners, by proper order to that effect, to discharge any ascertained insane person in their county, not admitted to the appropriate hospital, and not committed for crime, when it shall appear upon the certificate of two respectable physicians, and the chairman of their board, that such insane person ought to be discharged if in a hospital.—4595.

2456. Who may discharge from hospital; sheriff to come for discharged patient; expense, how paid.—Any three of the board of directors of any hospital, upon the superintendent certifying the facts (a copy of which certificate shall be sent to the clerk of the superior court of the county of settlement), shall be a board to discharge or remove from their hospital any person admitted as insane, when such person has become, or is found to be of sane mind, or when such person is incurable, and in the opinion of the superintendent his being at large will not be injurious to himself or dangerous to the community, or said board may permit such person to go to the county of his settlement on probation, when in the opinion of the said superintendent it will not be injurious to himself or dangerous to the community; and said board may discharge or remove such person, upon other sufficient causes appearing to them, and whenever any such person admitted as indigent, may be so discharged or removed, except as sane, it shall be the duty of the sheriff of the county of his settlement to convey such person to his county at its expense, and any such person discharged as sane shall receive from such hospital a sum of money sufficient to pay his transportation to the county of his settlement,

which sum shall be repaid by said county, and if necessary, the hospital shall provide the patient with a decent suit of clothes. When notified by the superintendent to come for, and remove any insane person from the hospital, it shall be the duty of the sheriff of the county, in which the insane person has a settlement, forthwith to convey the insane person from the hospital to the county of his settlement. The cost of said removal shall be advanced by the sheriff and repaid to him by the county of the insane person's settlement, and if any sheriff, after having been notified by the superintendent to remove any insane person as aforesaid, shall fail to do so within fifteen days from the time of the receipt of the letter of notice, he shall forfeit and pay to the said hospital the sum of fifty dollars, to be collected in the manner hereinafter provided for the collection of penalties, given in this act, and if the commissioners of any county shall fail to repay to the hospital the money disbursed in paying for the necessary clothes and traveling expenses of any person discharged as cured from said hospital, within sixty days after presentation of a claim therefor, the said commissioners shall forfeit and pay to the said hospital the sum of fifty dollars to be collected in the manner hereinafter provided for the collection of penalties.—Rev., 4596.

2457. Superintendent to discharge temporarily, when.—Each superintendent may, for the space of thirty days, or until the next meeting of the board of three directors provided for in section twenty-two of this act, discharge upon probation any patient, when in his opinion the same would not prove injurious to the patient or dangerous to the community. A report of all such probations shall be rendered to the said board of three directors at their first ensuing meeting.—Rev., 4597.

2458. Bonds for safe keeping of insane; penalty; condition.—All bonds executed for restraining insane persons from committing injuries, and for their safe keeping, support and care, shall be payable to the State of North Carolina, in the sum of five hundred dollars at least, and shall be transmitted to the clerk of the superior court of the county wherein said insane person is settled, for safe keeping, and may be put in suit by any person injured by said insane person by reason of his insane condition; and shall be put in suit by the solicitor for the judicial district, in which the county of said insane person's residence is situate, for any other breach thereof, wherein the damage received shall be for the use of said insane person.—Rev., 4598.

2459. Form of bond for safe keeping of insane.—The form of bond mentioned in the preceding section shall be as follows:

STATE OF NORTH CAROLINA—County of

Know all men by these presents, That we, A..... B....., principal, and C..... D....., and E..... F....., sureties, are held and firmly bound unto the State of North Carolina in the sum of.....dollars for the payment whereof we bind ourselves and each of us.

Witness our hands and seals this.....day....., 1....

The condition of the above obligation is this:

Whereas, the said A.... B...., with the view of hindering G.... H...., an insane person, resident in the county aforesaid, from being sent to.....insane hospital (or to effect his release from the said hospital as the case may be) hath undertaken to restrain him from committing injuries and to keep, maintain, support, and take care of the said G..... H..... Now, if the said A.....B..... shall faithfully comply with the conditions of this obligation, then the same shall be void, otherwise it shall be in full force.

A.....B. [Seal]
C.....D. [Seal]
E.....F. [Seal]

2460. May be established; license obtained; reports to be made under control of the board of charities.—It shall be lawful for any person or corporation to establish private hospitals, homes or schools for the cure and treatment of insane persons, idiots, and feeble minded persons and inebriates; but license to establish said hospitals, homes or schools, must, before the same are opened for patronage, be obtained from the board of public charities, and said hospitals, homes or schools, shall at all times be subject to the visitation of the said board or any member thereof, and each hospital, home or school shall make to said board a semi-annual report on the first days of January and July of each year. In said report shall be stated the number and residence of all patients admitted, the number discharged during the six months preceding, and the officers of the hospital, home or school. And each hospital, home, or school, shall file with the said board a copy of its by-laws, rules and regulations, and rates of charges. The books of each hospital, home, or school, shall at all times be open to the inspection of the said board or any member thereof. The board of public charities is hereby given the authority to supervise and regulate all private hospitals, homes, and schools, established hereafter in this state for the treatment of the above classes of people, and the said board shall have power to prescribe all such rules and regulations as they may deem necessary and shall exercise the power of visitation, and for that purpose may depute any member of its board to visit and supervise any private hospital, home, or school hereafter established under this act. The board of public charities may bring an action in the superior court of Wake county to vacate and annul any license granted by said board, when it shall appear to the satisfaction of said board that the managers of any private hospital, home, or school, have been guilty of gross neglect, cruelty, or immorality.—Rev., 4600.

2461. Counties and towns may establish.—Any county, city, or town, may establish a hospital for the maintenance, care, and treatment of such insane persons as can not be admitted into a state hospital, and of idiots and feeble-minded persons upon like conditions and requirements as are above prescribed for the institution of private hospitals; and the board of [public] charities is given the same authority over such hospitals as is given them by the preceding section of this act for private hospitals.—Rev., 4601.

2462. Part of system of public charities.—All hospitals, homes or schools for the care and treatment of insane persons, idiots and feeble-minded persons and inebriates, formed in compliance with section sixty of chapter one, Public Laws of 1899, and duly licensed by the board of public charities as herein provided, shall, during the continuance of such license, become and be a part of the system of public charities of the State of North Carolina.—Rev., 4602.

2463. Insane person placed in private hospital, when.—Whenever any person shall be found to be insane in the mode hereinbefore prescribed, and such person shall be possessed of an income sufficient to support those who may be legally dependent for support on the estate of such insane person, and moreover, to support and maintain such insane person in any named hospital without the state, or any private hospital within the state; and such insane person, if of capable mind to signify such preference, shall, in writing, declare his wish to be placed in such hospital instead of being in a state hospital (or in case such insane person is incapable of declaring such preference, then the same may be declared by his guardian) and two respectable physicians who shall have examined such insane person, with the clerk of the court or justice of the peace who made the examination, shall deem it proper, then it may be lawful for said clerk or justice, to-

gether with said physicians, to recommend in writing, that such insane person shall be placed in the hospital so chosen as a patient thereof.—Rev., 4603.

2464. Justice of the peace to report to clerk.—It shall be the duty of the justice, when he shall act, to report the proceedings in such cases to the clerk of the superior court of the county in which such insane person may reside or be domiciled.—Rev., 4604.

2465. Clerk to report proceedings to judge.—The clerk of the court shall lay the proceedings before the judge of the superior court of the district in which such insane person may reside or be domiciled, and if he approve them, he shall so declare in writing, and such proceedings with the approval thereof, shall be recorded by said clerk.—Rev., 4605.

2466. Proceedings authorize persons being sent to private hospital.—A certified copy of such proceedings, with the approval of said judge, shall be sufficient warrant to authorize any friend of such insane person appointed by the said judge to remove him to the hospital designated.—Rev., 4606.

2467. How patients transferred from public hospitals to, on petition.—When it is deemed advisable that any person a citizen of the state of North Carolina, or a citizen of any other state or country, temporarily sojourning in North Carolina, should be detained in any private hospital within the state, two persons, one of whom must be a physician, not connected with any private hospital, shall make affidavit before a justice of the peace or a clerk of the superior court of this state, that they have carefully examined the alleged insane person; that they believe him to be a fit subject for commitment to a hospital for the insane, and that his detention and treatment will be for his advantage and benefit. This certificate shall be filed with and approved by the clerk of the superior court in the county in which the examination is held, or in the county in which the private hospital is located, and a certified copy of this certificate, and approval of the clerk, shall be deposited with the superintendent of the private hospital, as his authority for holding the insane person. The clerk of the court may, if he sees fit, issue warrants and have the alleged insane person before him in manner prescribed in section fifteen, chapter one, Laws of 1899, and he may, if he sees fit, order any insane person brought before him to be taken to a private hospital within the state instead of one of the state hospitals, and his warrant shall be sufficient authority for holding such insane person in such private hospital. Idiots, feeble-minded persons and inebriates may be committed to and held in private hospitals or homes in this state in the manner hereinbefore prescribed for insane persons: Provided, that a period of detention in a private hospital or home of not less than one month and not more than six months shall be prescribed for inebriates, at the discretion of the clerk of the superior court approving the commitment.—Rev., 4607.

2468. Executive committee of state hospitals may order transfer made.—When it is deemed desirable that any inmate of any state hospital be transferred to any licensed private hospital within the state, the executive committee may so order and a certified copy of the commitment on file at the state hospital, and the order of the executive committee shall be sufficient warrant for holding the insane person, idiot, or inebriate by the officers of the private hospitals.—Rev., 4608.

2469. Guardian appointed for inmate of, when.—Upon the hearing before the clerk of the superior court of an application for the appointment of a guardian for the person or estate of any person alleged to be insane, the certificate of the superintendent of any state hospital, whether located in this state or some other state, certifying under oath, before any notary public or clerk of the court that the alleged

lunatic is an inmate of his hospital and that he has been an inmate for not less than three months, and that he believes that the said inmate is an insane person, shall be sufficient evidence upon which the clerk of the court may adjudge the person to be insane, and to justify the clerk in appointing a guardian for his property or person, or for both, and in such cases, an inquest of lunacy shall not be necessary.—Rev., 4609; Laws 1907, c. 232.

2470. Guardian of insane person to pay expenses out of estate. Support of inmates of private hospitals.—It shall be the duty of any person having legal custody of the estate of an insane person, idiot, or inebriate legally held in a private hospital to supply funds for his support in the hospital during his stay therein and so long as there may be sufficient funds for that purpose over and beyond maintaining and supporting those persons who may be legally dependent on the estate as aforesaid.—Rev., 4610.

2471. Fees and charges for examinations.—The fees and charges for examination for admission to private hospitals shall be the same as for examinations for admission to the state hospitals.—Rev., 4611.

2472. Criminals adjudged to be insane, committed to.—All persons who may hereafter commit crime while insane, and all persons who being charged with crime, and are adjudged to be insane at the time of their arraignment, and for that reason can not be put on trial for the crime alleged against them, shall be sent by the court before whom they are or may be arraigned for trial, when it shall be ascertained by due course of law that such person is insane and can not plead, to the hospital for the dangerous insane, and they shall be confined therein under the rules and regulations prescribed by the board of directors under the authority of this sub-chapter and they shall be treated, cared for and maintained in said hospital like patients in other state hospitals. Their confinement in said hospital shall not be regarded as punishment for any offense: Provided, that no insane person who has been or may hereafter be committed to the state hospital at Morganton, Raleigh or Goldsboro shall be transferred therefrom to the hospital for the dangerous insane.—Rev., 4617.

2473. Persons acquitted of certain crimes upon ground of insanity confined in.—When a person is accused of the crime of murder, attempt at murder, rape, assault with the intent to commit rape, highway robbery, train wrecking, arson or other crime, shall escape indictment, or shall have been acquitted upon trial upon the ground of insanity, or shall be found by the court to be without sufficient mental capacity to undertake his defense or to receive sentence after conviction, the court before which such proceedings are had shall detain such person in custody until an inquisition shall be had in regard to his mental condition. The judge shall, at the term of court at which such person is acquitted, cause notice to be given in writing to such person and his attorney, and, if in his good judgment it be necessary, to his nearest relative, naming the day upon which he shall proceed to make an inquisition in regard to the mental condition of such person. The judge shall cause such witnesses to be summoned and examined as he may deem proper or as the person so acquitted or his counsel may desire. At such inquisition the judge shall cause the testimony to be taken in writing and be preserved, and a copy of which shall be sent to the superintendent of the hospital for the dangerous insane to which such person is or has been committed. If, upon such inquisition, the judge shall find that the mental condition or disease of such person is such as to render him dangerous either to himself or other persons, and that his confinement for care, treatment, and security demands it, he shall commit such person to the hospital for dangerous insane, to be kept in custody therein for treatment and care as herein provided. Such person shall be kept therein, unless

transferred under previous provisions of this chapter, until restored to his right mind, in which event it shall be the duty of the authorities having the care of such person to notify the sheriff of the county from which he came, who shall order that he appear before the judge of the superior court of the district, to be dealt with according to law. The expense incident to such commitment and removal shall be paid by the county authorities from which such patient was sent.—Rev., 4618.

2474. Persons becoming insane in prison confined in.—All convicts becoming insane after commitment to the state prison and the fact being certified as now required by law, in the case of other insane persons, shall be admitted to the hospital herein provided for. In case of the expiration of the sentence of any convict insane person, while such person is confined to the said hospital, such person shall be kept until restored to his right mind, or such time as he may be considered harmless and incurable.—Rev., 4619.

2475. Person acquitted of capital felony upon ground of insanity; how discharged.—No person acquitted of a capital felony, on the ground of insanity, and committed to the hospital for the dangerous insane, shall be discharged therefrom unless an act authorizing his discharge be passed by the general assembly. No person acquitted of a crime of a lesser degree than a capital felony and committed to said department, shall be discharged therefrom except upon an order from the governor. No person convicted of a crime, and upon whom judgment was suspended by the judge on account of insanity, shall be discharged from said hospital except upon the order of the judge of the district, or of the judge holding the courts of the district in which he was tried: Provided, that nothing in this section shall be construed to prevent such person so confined in the hospitals for the dangerous insane from applying to any judge having jurisdiction for a writ of habeas corpus. No judge, issuing a writ of habeas corpus upon the application of such person, shall order his discharge, until the superintendents of the several state hospitals shall certify that they have examined such person and find him to be sane, and that his detention is no longer necessary for his own safety or the safety of the public.—Rev., 4620.

2476. Persons confined in; recovery; procedure.—Whenever a person confined therein and against whom an indictment for crime is pending has recovered or been restored to normal health and sanity, the superintendent of such hospital shall notify the clerk of the court of the county from which said person was sent, and the clerk will place the case against said person upon the docket of the superior or criminal court of his county for trial, and the person shall not be discharged without an order from said court. In all cases where such person confined in the hospital for the dangerous insane shall have recovered his mind, the clerk of the court of the county from which he was committed shall fix the amount of bail required for his appearance at the next term of the superior or criminal court of his county for trial, except in cases where the offense charged is a capital felony, and in this case only the judge of the superior court, residing within or holding the courts of said district, shall have the power to fix bail. If the person confined in the hospital for the dangerous insane, and reported sane as aforesaid, shall give the bond fixed by the clerk or judge as above provided for, he shall be discharged by the superintendent, and if he does not give the bond he shall be transferred to the jail of the county from which he was committed. The superintendent will notify the sheriff of said county, and the sheriff will remove the said person to the jail of his county. The sheriff will pay the expenses of said removal, and the county of the person's settlement will repay the sheriff for his expenses and services.—Rev., 4621.

CHAPTER XXXVII.

INNKEEPERS.

2477. Must furnish accommodations.—Every innkeeper shall at all times provide suitable food, rooms, beds and bedding for strangers and travelers whom he may accept as guests in his inn or hotel.—Rev., 1909.

2478. Liability for loss of baggage.—Innkeepers shall not be liable for loss, damage or destruction of the baggage or property of their guests except in case such loss, damage or destruction results from the failure of the innkeeper to exercise ordinary, proper and reasonable care in the custody of such baggage and property, and in case of such loss, damage or destruction resulting from the negligence and want of care of the said innkeeper he shall be liable to the owner of the said baggage and property to an amount not exceeding one hundred dollars: Provided, however, any guest may at any time before a loss, damage or destruction of his property notify the innkeeper in writing that his property exceeds in value the said sum of one hundred dollars, and shall upon demand of the innkeeper furnish him a list or schedule of the same, with the value thereof, in which case the innkeeper shall be liable for the loss, damage or destruction of said property because of any negligence on his part for the full value of the same: Provided further, that proof of the loss of any such baggage, except in case of damage or destruction by fire, shall be prima facie evidence of the negligence of said hotel or innkeeper.—Rev., 1910.

2479. Safe-keeping of valuables.—It shall be the duty of innkeepers, upon the request of any guest, to receive from said guest and safely keep money, jewelry and valuables to an amount not exceeding five hundred dollars; and no innkeeper shall be required to receive and take care of any money, jewelry or other valuables to a greater amount than five hundred dollars: Provided, the receipt given by said innkeeper to said guest shall have plainly printed upon it a copy of this section. No innkeeper shall be liable for the loss, damage or destruction of any money or jewels not so deposited.—Rev., 1911.

2480. Loss by fire.—No innkeeper shall be liable for loss, damage or destruction of any baggage or property caused by fire not resulting from the negligence of the innkeeper or by any other force over which the innkeeper had no control: Provided, that nothing herein contained shall enlarge the limit of the amount to which the innkeeper shall be liable as provided in preceding sections.—Rev., 1912.

2481. Copies of this chapter posted.—Every innkeeper shall keep posted in every room of his house occupied by guests, and in the office, a printed copy of this chapter and of all regulations relating to the conduct of guests. This chapter shall not apply to innkeepers, or their guests, where the innkeeper fails to keep such notices posted.—Rev., 1913.

2482. Negligence of guest.—Any innkeeper against whom claim is made for loss sustained by a guest may show that such loss resulted from the negligence of such guest or of his failure to comply with the reasonable and proper regulations of the inn.—Rev., 1914.

CHAPTER XXXVIII.

INSOLVENT DEBTORS.

1. Criminal Actions.

2483. Who may be discharged from prison.—The following persons may be discharged from imprisonment upon complying with this chapter:

(1) Every putative father of a bastard committed for a failure to give bond, or to pay any sum of money ordered to be paid for its maintenance.

(2) Every person committed for the fine and costs of any criminal prosecution.—Rev., 1915.

2484. When petition filed, on whom served.—Every such person, having remained in prison for twenty days, may apply by petition to the court, where the judgment against him was entered, praying to be brought before such court at a time and place to be named in the petition, and to be discharged upon taking the oath hereinafter prescribed. The applicant shall cause ten days notice of the time and place of filing the petition to be served on the sheriff or other officer by whom he was committed. In cases of conviction before a justice of the peace, the clerk of the superior court of the county where the convicted person confined for costs is, may administer the oath and discharge the prisoner.—Rev., 1916.

2485. Warrant issued for prisoner.—The clerk of the superior court, or justice of the peace before whom such petition is presented, shall forthwith issue a warrant to the sheriff, or keeper of the prison, requiring him to bring the prisoner before the court, at the time and place named for the hearing of the case, which warrant every such sheriff or keeper shall obey.—Rev., 1917.

2486. Proceeding on application.—At the hearing of the petition, if the prisoner have no visible estate, and take and subscribe the oath or affirmation prescribed in the succeeding section, the clerk of the superior court, or justice of the peace before whom he is brought, shall administer said oath or affirmation to him, and discharge him from imprisonment; of which an entry shall be made in the docket of the court, and, where the proceeding is before a justice of the peace, the justice shall return the petition and orders thereon into the office of the clerk of the superior court to be filed.—Rev., 1918.

2487. Oath to be taken.—The oath referred to in the preceding section shall be as follows:

I,, do solemnly swear (or affirm) that I have not the worth of fifty dollars in any worldly substance, in debts, money or otherwise whatsoever, and that I have not at any time since my imprisonment or before, directly or indirectly, sold or assigned, or otherwise disposed of, or made over in trust for myself or my family, any part of my real or personal estate, whereby to have or expect any benefit, or to defraud any of my creditors; so help me God.—Rev., 1918a.

2488. Who may suggest fraud.—The chairman of the board of commissioners, and every officer interested in the fee bill taxed against such prisoner, may oppose his taking the oath prescribed in the preceding section, and file particulars of the suggestion in writing, in the court where the same shall stand for trial as prescribed in this chapter in other cases of fraud or concealment.—Rev., 1919.

2. Civil Actions—Under Arrest.

2489. Who entitled.—The following persons are entitled to the benefit of this chapter:

(1) Every person taken or charged on any order of arrest for default of bail, or on surrender of bail in any action.

(2) Every person taken or charged in execution of arrest for any debt or damages rendered in any action whatever.—Rev., 1920.

2490. When petition may be filed.—Every person taken or charged as in the preceding section specified, may, at any time after his arrest

or imprisonment, petition the court from which the process issued on which he is arrested or imprisoned, for his discharge therefrom, on his compliance with this chapter.—Rev., 1921.

2491. The petition; verification.—The petition shall set forth the cause of the imprisonment, with the writ or process and complaint on which the same is founded, and shall have annexed to it a just and true account of all his estate, real and personal, and of all charges affecting such estate, as they exist at the time of filing his petition, together with all deeds, securities, books or writings whatever relating to the estate and the charges thereon; and also what property, real and personal, the petitioner claims as exempt from sale under execution, and shall have annexed to it an oath or affirmation, subscribed by the petitioner and taken before any person authorized by law to administer oaths, to the effect following:

I,, the within-named petitioner, do swear (or affirm) that the within petition and account of my estate, and of the charges thereon, are, in all respects, just and true; and that I have not at any time or in any manner disposed of or made over any part of my property, with a view to the future benefit of myself or my family, or with an intent to injure or defraud any of my creditors; so help me, God.—Rev., 1922.

2492. What notice given, and to whom.—Twenty days notice of the time and place at which the petition will be filed, together with a copy of such petition and the account annexed thereto, shall be personally served by such debtor on the creditor or creditors at whose suit he is arrested or imprisoned, and such other creditors as the debtor may choose, or their personal representatives or attorneys; and if the person to be notified reside out of the state, and have no agent or attorney in the state, the notice may be served on the officer having the claim to collect, or by two weekly publications in any newspaper in the state.—Rev., 1923.

2493. Who may suggest fraud.—Every creditor upon whom the notice directed in the preceding section is served may suggest fraud upon the hearing of the petition, and the issues made up respecting the fraud shall stand for trial as in other cases.—Rev., 1924.

2494. When no fraud suggested, debtor discharged.—If no creditor suggest fraud or oppose the discharge of the debtor, the justice of the peace or the clerk of the superior court before whom the petition is heard, shall forthwith discharge the debtor, and, if he surrender any estate for the benefit of his creditors, shall appoint a trustee of such estate. The order of discharge and appointment shall be entered in the docket of the court, and if granted by a justice of the peace a copy thereof shall be certified by him to the clerk of the superior court, where the same shall be recorded, and filed.—Rev., 1925.

2495. Cause continued, when.—Whenever it appears to the court that any debtor, who may have given bond for his appearance under this chapter, is prevented from attending court by sickness or other sufficient cause, the case shall be continued to another day, or to the next term, when the same proceedings shall be had as if the debtor had appeared according to the condition of his bond, and in the event of his death in the meantime, his bond shall be discharged.—Rev., 1926.

2496. Issue of fraud, how debtor discharged.—After an issue of fraud or concealment is made up, the debtor shall not discharge himself as to the creditors in that issue, except by trial and verdict in the same, or by a discharge by consent.—Rev., 1927.

2497. Fraud found; imprisoned, how.—If, on the trial, the jury find that there is any fraud or concealment, the judgment shall be that the debtor be imprisoned until a full and fair disclosure and account of all his money, property or effects be made by the debtor.—Rev., 1928.

2498. Effect of order of discharge.—The order of discharge under this chapter, whether granted upon a nonsuggestion of fraud, upon the finding of a jury in favor of the debtor, or otherwise, shall be in like terms and have like effect as prescribed in section one thousand nine hundred and thirty-three; except that the body of such debtor shall be free from arrest and imprisonment at the suit of every creditor, and as to him only, to whom the notice required may have been given; and the notices, or copies thereof, shall in all cases be filed in the office of the superior court clerk.—Rev., 1929.

3. Civil Actions—Not Under Arrest.

2499. May file petition; what to contain; how verified.—Every insolvent debtor may present a petition in the superior court, praying that his estate may be assigned for the benefit of all his creditors, and that his person may thereafter be exempt from arrest or imprisonment, on account of any judgment previously rendered, or of any debts previously contracted. On presenting such petition, every insolvent shall deliver therewith a schedule containing an account of his creditors and an inventory of his estate, which said inventory shall contain—

(1) A full and true account of his creditors, with the place of residence of each, if known, and the sum owing to each creditor, whether on written security, on account, or otherwise.

(2) A full and true inventory of his estate, real and personal, with the incumbrances existing thereon, and all books, vouchers and securities relating thereto.

(3) A full and true inventory of all property, real and personal, claimed by him as exempt from sale under execution.

He shall annex to his petition and schedule the following affidavit, which must be taken and subscribed by him before the clerk of the superior court, and must be certified by such officer:

I,, do swear (or affirm) that the account of my creditors, with the places of their residence, and the inventory of my estate, which are herewith delivered, are in all respects just and true; that I have not at any time or in any manner disposed of or made over any part of my estate for the future benefit of myself or my family, or in order to defraud any of my creditors; and that I have not paid, secured to be paid, or in any way compounded with any of my creditors, with a view that they, or any of them, should abstain or desist from opposing my discharge; so help me, God.—Rev., 1930.

2500. Duty of clerk on receiving petition.—On receiving the petition, schedule and affidavit, the clerk of the superior court shall make an order requiring all the creditors of such insolvent to show cause before said officer, within thirty days after publication of the order, why the prayer of the petitioner should not be granted, and shall post a notice of the contents of the order at the court-house door and three other public places in the county where the application is made for four successive weeks; or, in lieu thereof, shall publish the same for three successive weeks in any newspaper published in said county, or in an adjoining county.—Rev., 1931.

2501. Discharged, when.—If no creditor oppose the discharge of the insolvent, the clerk of the superior court before whom the hearing of the petition is had shall enter an order of discharge and appoint a trustee of all the estate of such insolvent.—Rev., 1932.

2502. Order of discharge, terms and effect.—The order of discharge shall declare that the person of such insolvent shall forever thereafter be exempted from arrest or imprisonment on account of any judgment, or by reason of any debt due at the time of such order, or contracted for before that time, though payable afterwards. But no debt, demand, judgment or decree against any insolvent, discharged under this chap-

ter, shall be affected or impaired by such discharge, but the same shall remain valid and effectual against all the property of such insolvent acquired after his discharge and the appointment of a trustee; and the lien of any judgment or decree upon the property of such insolvent shall not be in any manner affected by such discharge.—Rev., 1933.

2503. Creditor may suggest fraud.—Every creditor opposing the discharge of the insolvent may suggest fraud and set forth the particulars thereof in writing, verified by his oath; but the insolvent shall not be compelled to answer the suggestions of fraud in more than one case, though as many creditors as choose may make themselves parties to the issues in such cases.—Rev., 1934.

4. General Provisions.

2504. Issue of fraud made up, cause docketed for trial.—In every case under this chapter where an issue of fraud is made up, the case shall be entered in the trial docket of the superior court, and stand for trial as other causes; and upon a finding by the jury in favor of the petitioner the judge shall discharge the debtor; if the finding be against the petitioner he shall be committed to jail until he make a full disclosure.—Rev., 1935.

2505. Debtor may give bond.—Every debtor entitled to the provisions of this chapter may, at the time of filing his application for a discharge or at any time afterwards, tender to the sheriff or other officer having his body in charge, a bond, with sufficient surety, in double the amount of the sum due any creditor or creditors at whose suit he was taken or charged, conditioned for the appearance of such debtor before the court where his petition is filed, at the hearing thereof, and to stand to and abide by the final order or decree of the court in the case. If such bond be satisfactory to the sheriff, he shall forthwith release such debtor from custody.—Rev., 1936.

2506. Surety may surrender principal.—The surety in any bond conditioned for the appearance of any person under this chapter, may surrender the principal, or such principal may surrender himself, in discharge of the bond, to the sheriff or other officer of any court where such principal is bound to appear, in the manner provided in the chapter entitled Civil Procedure, subchapter Arrest and Bail.—Rev., 1937.

2507. When creditor liable for jail fees.—When any debtor is actually confined within the walls of a prison, on an order of arrest in default of bail or otherwise, the jailer must furnish him with necessary food during his confinement, if the prisoner require it, for which the jailer shall have the same fees as for keeping other prisoners. If the debtor be unable to discharge such fees, the jailer may recover them from the party at whose instance the debtor was confined. And at any time after the arrest, the sheriff or jailer may give notice thereof to the plaintiff, his agent or attorney, and demand security of him for the prison fees that accrue after such notice, and if the plaintiff fail to give such security, then the sheriff may discharge the debtor out of custody.—Rev., 1938.

2508. Persons removing debtors to defraud creditors, liable as debtor.—If any person shall remove or shall aid and assist in removing any debtor out of any county in which he shall have resided for the space of six months, or more, with the intent, by such removing, aiding or assisting, to delay, hinder or defraud the creditors, or any of them, of such debtor, the person so removing, aiding or assisting therein, and his executors or administrators, shall be liable to pay all the debts which the debtor removed may justly owe in the county from which he was so removed; and the same may be recovered by the creditors, their executors or administrators, by a civil action.—Rev., 1939.

2509. False swearing; penalty.—If any insolvent or imprisoned debtor take any oath prescribed in this chapter falsely and corruptly, and upon indictment for perjury be convicted thereof, he shall suffer all the pains of perjury, and he shall never after have any of the benefits of this chapter, but may be sued and imprisoned as though he had never been discharged.—Rev., 1940.

Note.—For additional penalty, see s. 3615 of the Revisal.

2510. General power of trustees.—Any trustee appointed under this chapter, in the several cases therein contemplated, is hereby declared a trustee of the estate of the debtor, in respect to whose property such trustee is appointed for the benefit of creditors, and is invested from the time of appointment with all the powers and authorities, and subject to the control, obligations and responsibilities prescribed by law in relation to personal representatives over the estates of deceased persons; but all debts shall be paid by the trustees pro rata.—Rev., 1941.

2511. Who may take jail bounds.—Any imprisoned debtor may take the benefit of the prison bounds by giving security, as required by law, except as follows:

(1) A debtor against whom an issue of fraud is found.

(2) Any debtor who, for other cause, is adjudged to be imprisoned until he make a full and fair disclosure or account of his property.—Rev., 1942.

5. Under Sentence.

2512. Confined in jail or penitentiary, who may apply for trustee.—Whenever any debtor is imprisoned in the penitentiary for any term whatever, or in a county jail for any term more than twelve months, application by petition may be made by any creditor, the debtor, or by his wife, or any of his relatives, for the appointment of a trustee to take charge of the estate of such debtor.—Rev., 1943.

2513. To whom application made when trustee appointed.—The application must be made to the superior court of the county where the debtor was convicted; and upon producing a copy of the sentence of such debtor, duly certified by the clerk of the court, together with an affidavit of the applicant that such debtor is actually imprisoned under such sentence, and is indebted in any sum whatever, the clerk of the court or the judge thereof may immediately appoint a trustee of the estate of such debtor.—Rev., 1944.

2514. Duty of trustee.—Every trustee is required to pay the debts of the imprisoned debtor in the manner directed in section numbered one thousand nine hundred and forty-one; and after paying such debts, the trustee shall apply the surplus, from time to time, to the support of the wife and children of such debtor, under the direction of the superior court; and whenever such imprisoned debtor is lawfully discharged from his imprisonment, the trustee so appointed shall deliver up to him all the estate, real and personal, of such debtor, after retaining a sufficient sum to satisfy the expenses incurred in the execution of the trust and lawful commissions therefor.—Rev., 1945.

2515. Trustee to make returns.—Such trustee shall make his returns and have his accounts audited and settled by the clerk of the superior court of the county where the proceeding was had, in like manner as provided for personal representatives.—Rev., 1946.

2516. Oath of trustee.—Before proceeding to the discharge of his duty, such trustee shall take and subscribe an oath, well and truly to execute his trust according to his best skill and understanding; which oath must be filed with the clerk of the superior court.—Rev., 1947.

2517. May appoint several trustees.—The court shall have power, when deemed necessary, to appoint more than one person trustee under

this chapter; but in reference to the rights, authorities and duties conferred herein, all such trustees shall be deemed one person in law.—Rev., 1948.

2518. Court may remove trustee and appoint successor.—In case of the death, removal, resignation or other disability of a trustee, the court making the appointment may from time to time supply the vacancy; and all proceedings may be continued by the successor in office in like manner as in the first instance.—Rev., 1949.

CHAPTER XXXIX.

INTEREST.

2519. Rate of, six per cent.—The legal rate of interest shall be six per centum per annum for such time as interest may accrue, and no more.—Rev., 1950.

2520. Penalty for usury; corporate bonds sold below par.—The taking, receiving, reserving or charging a greater rate of interest than six per centum per annum, either before or after the interest may accrue, when knowingly done, shall be a forfeiture of the entire interest which the note or other evidence of debt carries with it, or which has been agreed to be paid thereon. And in case a greater rate of interest has been paid, the person or his legal representatives or corporation by whom it has been paid, may recover back twice the amount of interest paid, in an action in the nature of action for debt: Provided, that in any action brought in any court of competent jurisdiction to recover upon any such note or other evidence of debt, it shall be lawful for the party against whom the action is brought to plead as a counterclaim the penalty above provided for, to-wit, twice the amount of interest paid as aforesaid, and also the forfeiture of the entire interest: Provided further, that nothing contained in the foregoing section shall be held or construed to prohibit private corporations from paying a commission on or for the sale of their coupon bonds, nor from selling such bonds for less than the par value thereof. This section shall not apply to contracts executed prior to February twenty-first, one thousand eight hundred and ninety-five.—Rev., 1951.

Note.—For limitation of actions, see Civil Procedure, s. 396 of the Revisal.

For damages against officers for money unlawfully detained, see s. 284 of the Revisal.

For special usury statute for New Hanover and Guilford counties, see 1905, c. 819.

The act of 1895, c. 69, which provides for the recovery of usurious interest if the action is brought within two years after the payment in full of the indebtedness, by its express terms does not apply to contracts antedating its ratification, and the right of plaintiff to recover at all is governed by section 3836 of The Code, which allows the recovery of twice the amount of interest paid, provided action therefor be brought within two years from the date of the usurious transaction.—*Roberts v. Insurance Co.*, 118—429.

The payer of usurious interest may recover the same in an action for money had and received to his use, or by way of counter-claim, when action is brought for the balance due on the usurious contract. Where the payee of a note, which is good as it originated, makes a special contract for a usurious rate of interest afterwards, to forbear enforcing payment, it is the special contract of forbearance which is usurious, while the original note remains untainted.—*Cobb v. Morgan*, 88—211.

An agreement to pay interest upon a note "at the rate of six per cent per annum, to be compounded annually," renders the contract usurious.—*Cox v. Brookshire*, 76—314.

When a promissory note is given with the stipulation that the interest is to be paid annually or semi-annually, the maker is chargeable with interest at the like rate upon each deferred payment of interest as if he had given a promissory note for the amount of such interest. By this mode of computation compound interest is not given, but a middle course is taken between simple and compound interest.—*Bledsoe v. Nixon*, 69—89.

For usury act of 1907 applicable to entire state, see "Crimes," subchapter "Usury," *infra*. Laws 1907, c. 110.

2521. Time from which it runs.—Interest is due and payable on instruments, as follows:

(1) Where the instrument provides for the payment of interest with-

out specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof.

(2) All bonds, bills, notes, bills of exchange, liquidated and settled accounts, shall bear interest from the time they become due, provided such liquidated and settled accounts be signed by the debtor, unless it be specially expressed that interest is not to accrue until a time mentioned in the said writings or securities.

(3) All bills, bonds or notes payable on demand, shall be held and deemed to be due when demandable by the creditor, and shall bear interest from the time they are demandable, unless otherwise expressed.

(4) All securities for the payment or delivery of specific articles shall bear interest as moneyed contracts; and the articles shall be rated by the jury at the time they become due.

(5) Bills of exchange which shall be drawn or indorsed in the state, and have been protested, shall carry interest, not from the date thereof, but from the time of payment therein mentioned.—Rev., 1952.

2522. Guardian notes bear compound.—Guardians shall have power to lend any portion of the estate of their wards upon bond with sufficient security, to be repaid with interest annually, and all the bonds, notes or other obligations which he shall take as guardian, shall bear compound interest, for which he must account, and he may assign the same to the ward on settlement with him.—Rev., 1953.

Interest is chargeable against a guardian from the time the moneys are received by him, there being no evidence that the same remained unemployed in his hands.—Neill v. Hodges, 83—501.

The rule for compounding interest upon notes due guardians is to make annual rests, making the aggregate principal and interest due at the end of a particular year a capital sum, bearing six per cent interest; then forward for another year, and so on.—Little v. Anderson, 71—190.

The policy of section 1592 of The Code, is to require an investment by a guardian to be secured by the bond or note of some person in addition to the borrower.—Watson v. Holton, 115—36.

2523. Contracts, except penal bonds and judgments to bear; jury to distinguish principal from.—All sums of money due by contract of any kind whatsoever, excepting money due on penal bonds, shall bear interest, and when a jury shall render a verdict therefor they shall distinguish the principal from the sum allowed as interest; and the principal sum due on all such contracts shall bear interest from the time of rendering judgment thereon until it be paid and satisfied. In like manner, the amount of any judgment or decree, except the costs, rendered or adjudged in any kind of action, though not on contract, shall bear interest till paid, and the judgment and decree of the court shall be rendered according to this section.—Rev., 1954.

2524. After verdict or report, computed by clerk.—When the judgment is for the recovery of money, interest from the time of the verdict or report until judgment be finally entered shall be computed by the clerk and added to the costs of the party entitled thereto.—Rev., 1955.

2525.—Judgment by default final, clerk ascertains.—Whenever a suit shall be instituted on a single bond, a covenant for the payment of money, bill of exchange, promissory note, or a signed account, and the defendant shall not plead to issue thereon, upon judgment, the clerk of the court shall ascertain the interest due by law, without a writ of inquiry, and the amount shall be included in the final judgment of the court as damages, which judgment shall be rendered therein in the manner prescribed by section one thousand nine hundred and fifty-four.—Rev., 1956.

CHAPTER XL.

JURORS.

1. How Selected.

2526. List made by county commissioners.—The board of county commissioners for the several counties at their regular meeting on the first Monday in June, in the year nineteen hundred and five and every two years thereafter, shall cause their clerks to lay before them the tax returns of the preceding year for their county, from which they shall proceed to select the names of all such persons as have paid all the taxes assessed against them for the preceding year and are of good moral character and of sufficient intelligence. A list of the names thus selected shall be made out by the clerk of the board of commissioners and shall constitute the jury list, and shall be preserved as such.—Rev., 1957.

Note.—For Johnston county act, see c. 209, Laws 1907.

2527. Names put in boxes.—The commissioners at their regular meeting on the first Monday in July in the year nineteen hundred and five, and every two years thereafter, shall cause the names on their jury list to be copied on small scrolls of paper of equal size and put into a box procured for that purpose, which must have two divisions marked No. 1 and No. 2, respectively, and two locks, the key of one to be kept by the sheriff of the county, the other by the chairman of the board of commissioners, and the box by the clerk of the board.—Rev., 1958.

Note.—For manner of drawing jury in Guilford, see 1905, c. 613.

2528. Drawn from box, how.—At least twenty days before each regular or special term of the superior court, the board of commissioners of the county shall cause to be drawn from the jury box out of the partition marked No. 1 by a child not more than ten years of age, thirty-six scrolls (in Cumberland county the commissioners may, in their discretion, cause to be drawn from the jury box an additional twelve scrolls), except when the term of the court is for the trial of civil cases exclusively, when they need not draw more than twenty-four scrolls, and the persons whose names are inscribed on said scrolls shall serve as jurors at the term of the superior court to be held for the county ensuing such drawing, and for which they are drawn, and the scrolls so drawn to make the jury shall be put into the partition marked No. 2. The said commissioners shall at the same time and in the same manner draw the names of eighteen persons who shall be summoned to appear and serve during the second week (except in the counties of Iredell and Rowan, where twenty-four jurors shall be drawn, and except in Hertford county, where fifteen extra jurors shall be drawn), and a like number for each succeeding week of the term of said court, unless the judge thereof shall sooner discharge all jurors from further service; and the trial jury which has served during each week shall be discharged by the judge at the close of said week, unless the said jury shall be then actually engaged in the trial of a case, and then they shall not be discharged until the trial is determined. The said commissioners may, at the same time and in the same manner, draw the names of eighteen other persons, who shall serve as petit jurors for the week for which they were drawn and summoned.—Rev., 1959.

2529. Jurors with suits pending.—If any of the jurors drawn have a suit pending and at issue in the superior court, the scrolls with their names must be returned into partition No. 1 of the jury-box.—Rev., 1960.

2530. When disqualified persons are drawn.—If any of the persons drawn to serve as jurors be dead, removed out of the county, or otherwise disqualified to serve as jurors, the scrolls with the names of such persons must be destroyed, and in such cases other persons shall be drawn in their stead.—Rev., 1961.

2531. How drawing to continue.—The drawing out of partition marked No. 1 and the putting the scrolls drawn into partition No. 2 shall continue until all the scrolls in partition No. 1 are drawn out, when all the scrolls shall be returned into partition No. 1 and drawn out again as herein directed.—Rev., 1962.

2532. When commissioners fail to draw jury.—If the commissioners for any cause fail to draw a jury for any term of the superior court, regular or special, the sheriff of the county and the clerk of the commissioners, in the presence of and assisted by two justices of the peace of the county, shall draw such jury in the manner above prescribed; and if a special term shall continue for more than two weeks, then for the weeks exceeding two, a jury or juries may be drawn as in this section provided.—Rev., 1963.

2. Petit Jurors and Talesmen.

2533. Peremptory challenges.—The clerk, before a jury shall be impaneled to try the issues in any civil suit, shall read over the names of the jury upon the panel in the presence and hearing of the parties or their counsel; and the parties, or their counsel for them, may challenge peremptorily four jurors upon the said panel, without showing any cause therefor, which shall be allowed by the court.—Rev., 1964.

2534. Peremptory challenges apportioned between defendants.—When there are two or more defendants in a civil action, the judge presiding at the trial, if it appears to the court that there are divers and antagonistic interests between the defendants, may, in his discretion apportion among the defendants the challenges now allowed by law to defendants, or he may increase the number of challenges to not exceeding four to each defendant or class of defendants representing the same interest: Provided, in either event the same number of challenges shall be allowed each defendant or class of defendants representing the same interest: Provided further, that the decision of the judge as to the nature of the interests and number of challenges shall be final.—Rev., 1965.

2535. Sworn; judge decides competency.—The clerk shall, at the beginning of the court, swear such of the petit jury as are of the original panel, to try all civil cases; and if there should not be enough of the original panel, the talesmen shall be sworn; and the petit jurors of the original panel, as well as talesmen, shall be sworn as prescribed in the chapter entitled Oaths: Provided, that nothing herein shall be construed to disallow the usual challenges in law to the whole jury so sworn or to any of them; and if by reason of such challenge, any juror shall be withdrawn, his place on the jury shall be supplied by any of the original venire, or from the bystanders qualified to serve as jurors, and the judge or other presiding officer of the court shall decide all questions as to the competency of jurors in both civil and criminal actions.—Rev., 1966.

2536. Tales jurors summoned; qualifications.—That there may not be a defect of jurors, the sheriff shall by order of court summon, from day to day, of the bystanders, other jurors, being freeholders, within the county where the court is held, to serve on the petit jury, and on any day the court may discharge those who have served the preceding day. It shall be a disqualification and a ground of challenge to any tales juror that such juror has acted in the same court as grand, petit

or tales juror within two years next preceding such term of the court.—Rev., 1967.

2537. Judge to appoint one to summon tales jurors, sheriff interested.—In the trial of any action before a jury where the sheriff of the county in which the case is to be tried is a party to or has any interest in the action, or when the presiding judge shall find upon investigation that the sheriff of the county is not a suitable person, on account of indirect interest in or relative to the cause of action, to be entrusted with the summoning of the tales jurors in any particular case pending, such judge shall appoint some suitable person to summon the jurors in place of the sheriff.—Rev., 1968.

3. Grand Jurors.

2538. How drawn.—The judges of the superior court, at the terms of their courts, except those terms which are for the trial of civil cases exclusively, and special terms for which no grand jury has been ordered, shall direct the names of all persons returned as jurors to be written on scrolls of paper and put into a box or hat and drawn out by a child under ten years of age; whereof the first eighteen drawn shall be a grand jury for the court; and the residue shall serve as petit jurors for the court.—Rev., 1969.

Note.—For special terms, see s. 1515 of Revisal.

2539. Exceptions to, when taken.—All exceptions to grand jurors for and on account of their disqualifications shall be taken before the jury is sworn and impaneled to try the issue, by motion to quash the indictment, and if not so taken the same shall be deemed to have been waived.—Rev., 1970.

2540. Foreman may administer oaths.—The foreman of every grand jury duly sworn and impaneled in any of the courts shall have power to administer oaths and affirmations to persons to be examined before it as witnesses: Provided, that the said foreman shall not administer such oath or affirmation to any persons except those whose names are endorsed on the bill of indictment by the officer prosecuting in behalf of the state, or by direction of the court: Provided further, that the foreman of the grand jury shall mark on the bill the names of the witnesses sworn and examined before the jury.—Rev., 1971.

2541. Must visit jail and county home.—Every grand jury, while the court is in session, shall visit the county home for the aged and infirm, the workhouse, if there is one, and the jail, examine the same, and especially the apartments in which inmates and prisoners shall be confined; and they shall report to the court the condition thereof and of the inmates and prisoners confined therein, and also the manner in which the jailer or superintendent has discharged his duties.—Rev., 1972.

Note.—For duty of grand jury in reporting infants without guardian, see s. 2307 *infra*.

4. Special Venire.

2542. Ordered; summoned.—Whenever a judge of the superior court shall deem it necessary to a fair and impartial trial of any person charged with a capital offense, he may issue to the sheriff of the county in which the trial may be, a special writ of venire facias, commanding him to summon such number of the freeholders of said county as the judge may deem sufficient (such number being designated in the writ), to appear on some specified day of the term as jurors of said court; and the sheriff shall forthwith execute the writ and return it to the clerk of the court on the day when the same shall be returnable, with the names of the jurors summoned.—Rev., 1973.

2543. Drawn from box, when.—Whenever a judge shall deem a special venire necessary, he may, at his discretion, issue an order to the clerk of the board of commissioners for the county, commanding him to bring into open court forthwith the jury boxes of the county, and he shall cause the number of scrolls as designated by him to be drawn from box No. 1 by a child under ten years of age. And the names so drawn (being freeholders) shall constitute the special venire, and the clerk of the superior Court shall insert their names in the writ of venire, and deliver the same to the sheriff of the county, and the persons named in the writ and no others shall be summoned by the said sheriff. If the special venire is exhausted before the jury is chosen, the judge in his discretion may order another special venire to be drawn and summoned in like manner as the first, until the jury has been chosen. The scrolls, containing the names of the persons drawn as jurors from box No. 1 shall, after the jury is chosen, be placed in box No. 2; and if box No. 1 is exhausted before the jury is chosen, the drawing shall be completed from box No. 2, after the same shall have been well shaken. In the counties of Durham and Rockingham whenever a special venire is ordered, the jurors shall be drawn as herein provided.—Rev., 1974.

2544. Penalty on sheriff not executing; on jurors not attending.—If any sheriff shall fail to duly execute and return such writ of venire facias, he shall be fined by the court not exceeding one hundred dollars; and all jurors so summoned shall attend until discharged by the court, under the same rules and penalties as are prescribed for other jurors.—Rev., 1975.

5. General Provisions.

2545. Summoned and must attend until discharged.—The clerk of the board of county commissioners shall, within five days from the drawing, deliver the list of the jurors drawn for the superior court to the sheriff of the county, who shall summon the persons therein named to attend as jurors at such court, which summons shall be served, personally, or by leaving a copy thereof at the house of the juror, at least five days before the sitting of the court to which he may be summoned; and jurors shall appear and give their attendance until duly discharged.—Rev., 1976.

2546. Penalty for non-attendance, regular and tales.—Every person on the original venire summoned to appear as a juror, who shall fail to give his attendance until duly discharged, shall forfeit and pay for the use of the county the sum of twenty dollars, to be imposed by the court: Provided, that each delinquent jurymen shall have until the next succeeding term to make his excuse for his non-attendance, and, if he shall render an excuse deemed sufficient by the court, he shall be discharged without costs. And every person summoned of the bystanders, who shall not appear and serve during the day as a juror, shall be fined in the sum of two dollars, unless he can show sufficient cause to the court; and the clerk shall forthwith issue an execution against the estate of the delinquent tales juror for such amercement and costs.—Rev., 1977.

2547. Furnished with accommodations.—When any jury, impaneled to try any cause, shall be put in charge of an officer of the court, the said officer shall furnish said jury with such accommodation as the court may order, and the same shall be paid for by the party cast or by the county, under the order and in the discretion of the judge of said court.—Rev., 1978.

2548. Exempt from civil arrest.—No sheriff or other officer shall arrest under civil process any juror during his attendance on or going to and returning from any court of record. All such service shall be void, and the defendant on motion shall be discharged.—Rev., 1979.

2549. Exemptions from jury duty.—No practicing physician, licensed druggist, telegraph operator who is in the regular employ of any telegraph company or railroad company, train dispatcher who has the actual handling of either freight or passenger trains, regularly licensed pilot, regular minister of the gospel, officer or employee of a state hospital for the insane, or active member of a fire company, shall be required to serve as a juror.—Rev., 1980.

2550. Clerk to keep record of jurors.—The clerk of the superior court shall record alphabetically in a book kept for the purpose the names of all grand and petit jurors and talesmen who shall serve in his court, with the term at which they serve.—Rev., 1981.

Note.—For compensation of jurors, see Official Fee Bill.

For list of guardians furnished grand jury, see *Guardian*, s. 2307 *infra*.

For arguments to jury, see *Attorneys*, s. 216 of Revisal.

For jurors in justices' courts, see s. 1428 et seq. of Revisal.

For province of, in divorce, see s. 1564 of Revisal.

For right of trial by jury, see ss. 527, 533, 2005 of Revisal.

For waiver of trial by jury, see s. 540 of Revisal.

For verdicts by jurors, see ss. 550, 553 of Revisal.

CHAPTER XLI.

LANDLORD AND TENANT.

1. The Relation.

2551. Lessors and lessees, not partners.—No lessor of property, merely by reason that he is to receive as rent or compensation for its use a share of the proceeds or net profits of the business in which it is employed, or any other uncertain consideration, shall be held a partner of the lessee.—Rev., 1982.

An agricultural agreement between two persons, one to furnish the outfit and the land, and the other to hire the laborers and superintend the farm during the year, the former to provide money to carry on the business, half of which is to be repaid him, and the profits to be divided between them, creates the relation of partners; and where the land owner executed a lien for supplies for the common business the common property in the crop was thereby bound.—*Reynolds v. Pool*, 84—87.

2552. Forfeiture without demand for rent, when.—Whenever any half year's rent or more shall be in arrear from any tenant to his landlord, and the landlord has a subsisting right to re-enter for the non-payment of such rent, he may bring an action for the recovery of the demised premises, and the service of the summons therein shall be deemed equivalent to a demand of the rent in arrear and a re-entry on the devised premises, and if, on the trial of the cause, it shall appear that the landlord had a right to re-enter the plaintiff shall have judgment to recover the demised premises and his costs.—Rev., 1983.

If a tenant does an act which amounts to a disclaimer of the lessor's title, it operates as a forfeiture, and no notice to quit is necessary.—*Love v. Edmondston*, 23—152.

2553. Length of notice to quit.—A tenancy from year to year may be terminated by a notice to quit given one month or more before the end of the current year of the tenancy; a tenancy from month to month by a like notice of seven days; a tenancy from week to week, of two days.—Rev., 1984.

2554. Agreement to repair, how construed.—An agreement in a lease to repair a demised house shall not be construed to bind the contracting party to rebuild or repair in case the house shall be destroyed or damaged to more than one-half its value, by accidental fire not occurring from the want of ordinary diligence on his part.—Rev., 1985.

2. The Lessor.

2555. Recovers for use, when.—Whenever any person shall occupy land of another by the permission of such other, without any express agreement for rent, or upon a parol lease which is void, the landlord may recover a reasonable compensation for such occupation, and if by such parol lease a certain rent was reserved, such reservation may be received as evidence of the value of the occupation.—Rev., 1986.

2556. Rent apportioned, estate terminated.—If a lease of land, in which rent is reserved, payable at the end of the year or other certain period of time, be determined by the death of any person during one of the periods in which the rent was growing due, the lessor or his personal representative may recover a part of the rent which becomes due after the death, proportionate to the part of the period elapsed before the death, subject to all just allowances; and if any security shall have been given for such rent it shall be apportioned in like manner.—Rev., 1987.

2557. Rents and charges apportioned to successive owners.—In all cases where rents, rent charges, annuities, pensions, dividends, or any other payments of any description, are made payable at fixed periods to successive owners under any instrument, or by any will, and where the right of any owner to receive payment is terminable by a death or other uncertain event, and where such right shall so terminate during a period in which a payment is growing due, the payment becoming due next after such terminating event, shall be apportioned among the successive owners according to the parts of such periods elapsing before and after the terminating event.—Rev., 1988.

2558. Grantees of reversion, same rights and liabilities as grantors.—The grantee in every conveyance of reversion in lands, tenements or hereditaments, shall have the like advantages and remedies by action or entry against the holders of particular estates in such real property, and their assigns, for nonpayment of rent, and for the non-performance of other conditions and agreements contained in the instruments by the tenants of such particular estates, as the grantor or lessor or his heirs might have; and the holders of such particular estates, and their assigns, shall have the like advantages and remedies against the grantee of the reversion, or any part thereof, for any conditions and agreements contained in such instruments, as they might have had against the grantor or his lessors or his heirs.—Rev., 1989.

3. The Lessee.

2559. Holds to end of farming year.—Where any lease for years of any land let for farming on which a rent is reserved shall determine during a current year of the tenancy, by the happening of any uncertain event determining the estate of the lessor, the tenant in lieu of emblements shall continue his occupation to the end of such current year, and shall then give up such possession to the succeeding owner of the land, and shall pay to such succeeding owner a part of the rent accrued since the last payment became due, proportionate to the part of the period of payment elapsing after the termination of the estate of the lessor, to the giving up such possession, and the tenant in such case shall be entitled to a reasonable compensation for the tillage and seed of any crop not gathered at the expiration of such current year from the person succeeding to the possession.—Rev., 1990.

2560. Not liable for accidental damage.—A tenant for life, or years, or for a less term, shall not be liable for damage occurring on the demised premises accidentally, and notwithstanding reasonable diligence on his part; unless he so contract.—Rev., 1991.

2561. May surrender, building destroyed or damaged.—If a demised house, or other building, be destroyed during the term, or so much damaged that it can not be made reasonably fit for the purpose for which it was hired, except at an expense exceeding one year's rent of the premises, and the damage occur without negligence on the part of the lessee or his agents or servants, and there be in the lease no agreement respecting repairs, or providing for such a case, and the use of the house damaged was the main inducement to the hiring, the lessee may surrender his estate in the demised premises by a writing to that effect delivered or tendered to the landlord within ten days from the damage, and by paying or tendering at the same time all rent in arrear, and a part of the rent growing due at the time of the damage, proportionate to the time between the last period of payment and the occurrence of the damage, and the lessee shall be thenceforth discharged from all rent accruing afterwards; but not from any other agreement in the lease. This section shall not apply if a contrary intention appear from the lease.—Rev., 1992.

4. Agricultural Tenancies.

2562. Landlord's lien, crop vested in, to secure, how enforced.—When lands shall be rented or leased by agreement, written or oral, for agricultural purposes, or shall be cultivated by a cropper, unless otherwise agreed between the parties to the lease or agreement, any and all crops raised on said lands shall be deemed and held to be vested in possession of the lessor or his assigns at all times, until the rents for said lands shall be paid and until all the stipulations contained in the lease or agreement shall be performed, or damages in lieu thereof shall be paid to the lessor or his assigns, and until said party or his assigns shall be paid for all advancements made and expenses incurred in making and saving said crops. This lien shall be preferred to all other liens, and the lessor or his assigns shall be entitled, against the lessee or cropper or the assigns of either who shall remove the crop or any part thereof from the lands without the consent of the lessor or his assigns, or against any other person who may get possession of said crop or any part thereof, to the remedies given in an action upon a claim for the delivery of personal property.—Rev., 1993.

Although under sections 1754, 1799 and 1800 of The Code, the lien of a landlord for advances is superior to that of a third party making advances to the tenant, nevertheless such priority exists only for advances made during the year in which the crops were made and not for a balance due for an antecedent year.—*Fleming v. Davenport*, 116—153.

The difference between a tenant and a cropper is, the tenant has an estate in the land for the term, and therefore has a property in the crops. If he pays a part of the crop as rent, he divides the crop, and until division is made the right of property and possession to the whole is his. A cropper has no estate in the land, and though he has in some sense the possession of the crop, it is only the possession of a servant; the property in the crop belongs to the landlord and he divides the crop. A tenant has a right to dispose of the crop subject to the landlord's right for rent before division; a cropper can not.—*Harrison v. Ricks*, 71—7.

The statute gives the landlord the title to the crop until the rent is paid (whether the claim be reduced to judgment or not), and such title is not impaired by the fact that the tenant conveys the crop to a third person, who takes without notice of the landlord's claim; the rule caveat emptor applies.—*Belcher v. Grimsley*, 88—88.

Every agreement between the owner of lands and a cropper for their cultivation is a special and entire contract. If the cropper abandons it before completion he can not recover by a partial performance, and his interest becomes vested in the landlord, divested of any lien which may have been attached to it for agricultural advances while it was the property of the cropper.—*Thigpen v. Leigh*, 98—47.

A crop cultivated by a tenant and left standing in the field after the expiration of the term, belongs to the landlord, regardless of the tenant's having assigned the same.—*Sanders v. Ellington*, 77—255.

Where a lessor gets possession of the crop by his own act, the remedy of the lessee to recover his part thereof is by claim and delivery, and in such case, the lessor being solvent, and required to give bond of indemnity, the court will not restrain him from selling the crop.—*Wilson v. Respass*, 86—112.

2563. Rights of tenant.—Whenever the lessor or his assigns shall get the actual possession of the crop or any part thereof otherwise than by the mode prescribed in the preceding section, and said lessor or

his assigns shall refuse or neglect, upon a notice, written or oral, of five days, given by the lessee or cropper or the assigns of either, to make a fair division of said crop, or to pay over to such lessee or cropper or the assigns of either, such part thereof as he may be entitled to under the lease or agreement, then and in that case the lessee or cropper or the assigns of either shall be entitled against the lessor or his assigns to the remedies given in an action upon a claim for the delivery of personal property to recover such part of the crop as he, in law and according to the lease or agreement, may be entitled to. The amount or quantity of such crop claimed by said lessee or cropper or the assigns of either, together with a statement of the grounds upon which it is claimed, shall be fully set forth in an affidavit at the beginning of the action.—Rev., 1994.

2564. Action on the contract; tenant's undertaking.—Where any controversy shall arise between the parties, and neither party avails himself of the provisions of this chapter, it shall be competent for either party to proceed at once to have the matter determined in the court of a justice of the peace, if the amount claimed be two hundred dollars or less, and in the superior court of the county where the property is situate if the amount so claimed shall be more than two hundred dollars. But in case there shall be a continuance or an appeal from the justice's decision to the superior court, the lessee or cropper, or the assigns of either, shall be allowed to retain possession of said property upon his giving an undertaking to the lessor or his assigns, or the adverse party, in a sum double the amount of the claim, if such claim does not amount to more than the value of such property, otherwise to double the value of such property, with good and sufficient surety, to be approved by the justice of the peace or the clerk of the superior court, conditioned for the faithful payment to the adverse party of such damages as he shall recover in said action.—Rev., 1995.

2565. Crops delivered to landlord; undertaking.—In case the lessee or cropper, or the assigns of either, shall, at the time of the appeal or continuance mentioned in the preceding section, fail to give the undertaking therein required, then the constable or other lawful officer shall deliver the property into the actual possession of the lessor or his assigns, upon the lessor or his assigns giving to the adverse party an undertaking in double the amount of said property, to be justified as required in the preceding section, conditioned for the forthcoming of such property, or the value thereof, in case judgment shall be pronounced against him.—Rev., 1996.

2566. If neither gives undertaking, crops sold.—If neither party gives the undertaking prescribed in the two preceding sections, it shall be the duty of the justice of the peace or the clerk of the superior court to issue an order to the constable or sheriff, or other lawful officer, directing him to take into his possession all of said property, or so much thereof as shall be necessary to satisfy the claimant's demand and costs, and to sell the same under the rules and regulations prescribed by law for the sale of personal property under execution, and to hold the proceeds thereof subject to the decision of the court upon the issue or issues pending between the parties.—Rev., 1997.

Landlord's lien includes such costs as are necessary to recover his rents by law, and the crops are his until the rents and costs are paid, and the tenant can claim no constitutional exemption in the crops.—*Slaughter v. Winfrey*, 85—159.

2567. Tenant's crop not subject to execution against landlord.—Whenever servants and laborers in agriculture shall by their contracts orally or in writing be entitled, for wages, to a part of the crops cultivated by them, such part shall not be subject to sale under executions against their employers, or the owners of the land cultivated.—Rev., 1998.

2568. Turpentine and lightwood leases.—This chapter shall apply to all leases or contracts to lease turpentine trees, or use lightwood for purposes of making tar, and the parties thereto shall be fully subject to the provisions and penalties of this chapter.—Rev., 1999.

2569. Mining and timber land leases.—If in a lease of land for mining, or of timbered land for the purpose of manufacturing the timber into goods, rent shall be reserved, and if it shall be agreed in the lease that the minerals, timber or goods, or any portion thereof, shall not be removed until the payment of the rent, in such case the lessor shall have the rights and be entitled to the remedy given by this chapter.—Rev., 2000.

5. Summary Ejectment.

2570. Tenant dispossessed, when.—Any tenant or lessee of any house or land, and the assigns under the tenant or legal representatives of such tenant or lessee, who shall hold over and continue in the possession of the demised premises, or any part thereof, without the permission of the landlord, and after demand made for its surrender, may be removed from such premises in the manner hereinafter prescribed in either of the following cases:

1. Whenever a tenant in possession of real estate holds over after his term has expired.

2. Whenever the tenant or lessee, or other person under him, has done or omitted any act by which, according to the stipulations of the lease, his estate has ceased.

3. When any tenant or lessee of lands or tenements, being in arrear for rent, or having agreed to cultivate the demised premises and to pay a part of the crop to be made thereon as rent, or who shall have given to the lessor a lien on such crop as a security for the rent, shall desert the demised premises, and leave them unoccupied and uncultivated.

4. Whenever any tenant or cropper shall enter into a contract for the rental of land for the current or ensuing year, and without just cause wilfully neglects or refuses to perform the terms of his contract, then such tenant or cropper shall forfeit his right of possession to the premises. This subsection shall only apply in the counties of Wake, Hdy, Anson, Hertford, Sampson, Franklin, Union, Wayne, Lenoir, Greene, Johnston, Jones, Onslow, Craven, Cleveland, Sampson, Pitt, Duplin, Gates, Cumberland, Perquimans, Chowan, Robeson, Bladen, Nash, Harnett, Edgecombe, Wilson, Rockingham, Pender, Currituck, Gaston, Northampton, Beaufort, Chatham, Tyrrell, Mecklenburg, Halifax, Caswell, Camden, Cabarrus, Columbus, Martin, Montgomery, Washington, Yadkin, Randolph, Rowan, Burke, Alleghany, Jackson and Swain.—Rev., 2001.

A tenant may remove the manure accumulated during his tenancy, provided he does so before his term expires, and takes care not to scrape too deep so as to take any part of the virgin soil.—*Smithwick v. Ellison*, 24—326.

Summary proceedings in ejectment before a justice of the peace, under the landlord and tenant act, can only be had where the simple relation of lessor and lessee exists, and there is a holding over after the term. The justice's jurisdiction is concluded where the relation of mortgagor and mortgagee, or vendor and vendee exists.—*Hughes v. Mason*, 84—472.

Where a lessor leases for ——— dollars a year, payable monthly, re-entry can not be made on failure to pay the monthly rent until the year has expired.—*Meroney v. Wright*, 81—390. See also decisions under jurisdiction of justices, ante.

A person put into possession of land without any rent being required, and upon the express agreement to leave when the owner requires him to do so, is a tenant at will and not entitled to notice to quit.—*Humphreys v. Humphreys*, 25—362.

2571. Summons issues by justice on verified complaint.—When the lessor or his assigns, or his or their agent or attorney, shall make oath in writing, before any justice of the peace of the county in which the demised premises are situated, stating such facts as constitute one of the cases above described, and describing the premises and asking to be put in possession thereof, the justice shall issue a summons re-

citing the substance of the oath, and requiring the defendant to appear before him or some other justice of the county, at a certain place and time (not to exceed five days from the issuing of the summons, without the consent of the plaintiff or his agent or attorney), to answer the complaint. The plaintiff or his agent or attorney may in his oath claim rent in arrear, and damage for the occupation of the premises since the cessation of the estate of the lessee: Provided, the sum claimed shall not exceed two hundred dollars; but if he shall omit to make such claim, he shall not be thereby prejudiced in any other action for their recovery.—Rev., 2002.

2572. Service of summons.—The officer receiving such summons shall immediately serve it by the delivery of a copy to the defendant or by leaving a copy at his usual or last place of residence, with some adult person, if any such be found there; or, if the defendant have no usual place of residence in the county and can not be found there.—Rev., 2003.

2573. Judgment by default or confession.—The summons shall be returned according to its tenor, and if on its return it shall appear to have been duly served, and if the defendant shall fail to appear or shall admit the allegations of the complaint, the justice shall give judgment that the defendant be removed from, and the plaintiff be put in possession of, the demised premises; and if any rent or damages for the occupation of the premises after the cessation of the estate of the lessee, not exceeding two hundred dollars, be claimed in the oath of the plaintiff as due and unpaid, the justice shall inquire thereof, and give judgment as he may find the fact to be.—Rev., 2004.

2574. Trial by justice; jury trial; judgment; execution.—If the defendant by his answer shall deny any material allegation in the oath of the plaintiff, the justice shall hear the evidence and give judgment as he shall find the facts to be. If either party shall demand a trial by jury, it shall be granted under the rules prescribed by law for other trials by jury before a justice; and if the jury shall find that the allegations in the plaintiff's oath, which entitles him to be put in possession is true, the justice shall give judgment that the defendant be removed from and the plaintiff put in possession of the demised premises, and also for such rent and damages as shall have been assessed by the jury and for costs; and shall issue his execution to carry the judgment into effect.—Rev., 2005.

2575. Damages assessed to time of trial.—On appeal to the superior court, the jury trying the issue joined shall assess the damages of the plaintiff for the detention of his possession to the time of the trial in that court, and judgment for the rent in arrear and for the damages assessed may, on motion, be rendered against the sureties to the appeal.—Rev., 2006.

2576. Rent and cost tendered by tenant.—If, in any action brought to recover the possession demised premises upon a forfeiture for the nonpayment of rent, the tenant, before judgment given in such action, shall pay or tender the rent due and the costs of the action, all further proceedings in such action shall cease; or if the plaintiff shall further prosecute his action, and the defendant shall pay into court for the use of the plaintiff a sum equal to that which shall be found to be due, and the costs, to the time of such payment, or to the time of a tender and refusal, if one has occurred, the defendant shall recover from the plaintiff all subsequent costs; the plaintiff shall be allowed to receive the sum paid into court for his use, and the proceedings shall be stayed.—Rev., 2007.

2577. Appeal; undertaking on; increase of.—Either party may appeal from the judgment of the justice, as is prescribed in other cases of

appeal from the judgment of a justice; but no execution commanding the removal of a defendant from the possession of the demised premises shall be suspended until the defendant shall have given an undertaking in an amount not less than one year's rent of the premises, with sufficient surety, who shall justify and be approved by the justice, to be void if the defendant shall pay any judgment which in that or any other action the plaintiff may recover for rent, and for damages for the detention of the land. At any term of the superior court of the county in which such appeal is docketed after the lapse of one year from the date of the filing of the undertaking above mentioned, the tenant, after legal notice to that end has been duly executed on him, may be required to show cause why said undertaking should not be increased to an amount sufficient to cover rents and damages for such period as to the court may seem proper, and if such tenant shall fail to show proper cause and shall not file such bond for rents and damages as the court may direct, or make affidavit that he is unable so to do and show merits, his appeal shall be dismissed and the judgment of the justice of the peace shall be affirmed.—Rev., 2008.

2578. Restitution, when. If the proceedings before the justice shall be brought before a superior court and quashed, or judgment be given against the plaintiff, the superior or other court in which final judgment shall be given, shall, if necessary, restore the defendant to the possession, and issue such writs as shall be proper for that purpose.—Rev., 2009.

2579. Damages to tenant for wrongful removal.—If, by order of the justice, the plaintiff shall be put in possession, and the proceedings shall be afterwards quashed or reversed, the defendant may recover damages of the plaintiff for his removal.—Rev., 2010.

Note.—For conveyance of rent without attornment, see s. 947 of Revisal.

For penalty for removing crop without payment of rent, see Crimes.

For penalty for unlawful seizure of crops by landlord, see Crimes.

For penalty upon tenant for surrendering possession to one not landlord, see Crimes.

For injury to property by tenant, see Crimes.

For requirement of leases in writing, see s. 976 of Revisal.

For proceedings before justices, see Courts—Justices'.

For jury trial in summary ejectment, see Courts—Justices'.

For costs, see Costs.

CHAPTER XLII.

LIBEL AND SLANDER.

2580. Notice to newspaper before action.—Before any action, either civil or criminal, shall be brought for the publication, in a newspaper or periodical, of a libel, the plaintiff or prosecutor shall at least five days before instituting such action serve notice in writing on the defendant specifying the article and the statements therein which he alleges to be false and defamatory.—Rev., 2012.

2581. Good faith and correction, actual damages recovered; nominal fine.—If it shall appear upon the trial that said article was published in good faith; that its falsity was due to an honest mistake of the facts, and that there were reasonable grounds for believing that the statements in said article were true, and that within ten days after the service of said notice a full and fair correction, apology and retraction was published in the same editions or corresponding issues of the newspaper or periodical in which said article appeared, and in as conspicuous place and type as was said original article, then the plaintiff in such case, if a civil action, shall recover only actual damages, and, if, in a criminal proceeding, a verdict of "guilty" shall be rendered on such a state of facts, the defendant shall be fined a penny and the costs,

and no more: Provided, that this chapter shall not apply to actions pending on the thirteenth day of March, one thousand nine hundred and one.—Rev., 2013.

2582. Anonymous communications.—The two preceding sections shall not apply to anonymous communications and publications.—Rev., 2014.

2583. Slander of women.—Whereas, doubts have arisen whether actions of slander can be maintained against persons who may attempt, in a wanton and malicious manner, to destroy the reputation of innocent and unprotected women, whose very existence in society depends upon the unsullied purity of their character, therefore any words written or spoken of a woman, which may amount to a charge of incontinency, shall be actionable.—Rev., 2015.

CHAPTER XLIII.

LIENS.

1. Labor and Materials.

2584. On buildings and other property.—Every building built, rebuilt, repaired or improved, together with the necessary lots on which such building may be situated, and every lot, farm or vessel, or any kind of property, real or personal, not herein enumerated, shall be subject to a lien for the payment of all debts contracted for work done on the same, or material furnished. This section shall apply to the property of married women when it shall appear that such building was built or repaired on her land with her consent or procurement, and in such case she shall be deemed to have contracted for such improvements.—Rev., 2016.

An overseer is not entitled to a laborer's lien on the crop or land of his employer for his wages for superintendence of the same.—Whitaker v. Smith, 81—340.

A vendor has no lien upon lumber for the purchase-money, unless the lumber was furnished with the understanding that it was to be used in building or repairing on the purchaser's land.—Lanier v. Bell, 81—337.

The homestead right is not affected by a lien for materials furnished and used in improvements upon land covered by a homestead, and the act of assembly, in so far as it gives such a lien, is unconstitutional.—Cumming v. Bloodworth, 87—83.

A lien attaches from the time the materials begin to be furnished, and the notice relates back to that time.—Chadburn v. Williams, 71—444.

Unless a contract, express or implied, is made with the owner of the land, no lien can attach thereon for work done or materials furnished for erecting or repairing buildings thereon.—Nicholson v. Nicholson, 115—200.

2585. Personal property repaired.—Any mechanic or artisan who shall make, alter or repair any article of personal property at the request of the owner or legal possessor of such property, shall have a lien on such property so made, altered or repaired for his just and reasonable charge for his work done and material furnished, and may hold and retain possession of the same until such just and reasonable charges shall be paid; and if not paid for within the space of thirty days, provided it does not exceed fifty dollars, if over fifty dollars ninety days, after the work shall have been done, such mechanic or artisan may proceed to sell the property so made, altered or repaired at public auction, by giving two weeks' public notice of such sale by advertising in some newspaper in the county in which the work may have been done, or if there be no such newspaper, then by posting up notice of such sale in three of the most public places in the county, town or city in which the work may have been done, and the proceeds of the said sale shall be applied first to the discharge of the said lien and the expenses and costs of keeping and selling such property, and

the remainder, if any, shall be paid over to the owner thereof.—Rev., 2017.

Where an article of personal property was repaired by a laborer and delivered to the owner, the former has no lien for the price of his work, either at common law or under the statute. Retention of possession is necessary to enforce such lien.—*McDougal v. Crapon*, 95—293

2586. Constructing railroad; claims collected; time of action.

—As often as any contractor for the construction of any part of a railroad which is in progress of construction shall be indebted to any laborer for thirty or less number of days' labor performed in constructing said road, such laborer may give notice of such indebtedness to said company in the manner herein provided, and said company shall thereupon become liable to pay such laborer the amount so due him for such labor, and an action may be maintained against said company therefor. Such notice shall be given by said laborer to said company within twenty days after the performance of the number of days' labor for which the claim is made. Such notice shall be in writing, and shall state the amount and number of days' labor, and the time when the labor was performed for which the claim is made, and the name of the contractor from whom due, and shall be signed by such laborer, or his attorney, and shall be served on an engineer, agent or superintendent employed by said company having charge of the section of the road on which such labor was performed, personally, or by leaving the same at the office or usual place of business of such engineer, agent or superintendent, with some person of suitable age. But no action shall be maintained against any company under the provisions of this section, unless the same is commenced within thirty days after notice is given to the company by such laborer as above provided.—Rev., 2018.

Note.—See s. 2589 infra.

2. Subcontractors.

2587. Given preferred lien.—All subcontractors and laborers who are employed to furnish or who do furnish material for the building, repairing or altering any house or other improvement on real estate, shall have a lien on said house and real estate for the amount of such labor done or material furnished, which lien shall be preferred to the mechanics' lien now provided by law, when notice thereof shall be given as hereinafter provided, which may be enforced as provided for other liens in this chapter, except where it is otherwise provided: Provided, that the sum total of all liens due subcontractors and material men shall not exceed the amount due the original contractor at the time of notice given.—Rev., 2019.

2588. Notice to owner; liability of.—Any subcontractor, laborer or material man, who claims a lien as provided in the preceding section, may give notice to the owner or lessee of the real estate who makes the contract for such building or improvement at any time before the settlement with the contractor, and if the said owner or lessee shall refuse or neglect to retain out of the amount due the said contractor under the contract as much as shall be due or claimed by the subcontractor, laborer or material man, the subcontractor, laborer or material man may proceed to enforce his lien, and after such notice is given no payment to the contractor shall be a credit on or discharge of the lien herein provided.—Rev., 2020.

2589. Contractor shall furnish owner with statement of indebtedness; subcontractor may.—Whenever any contractor, architect or other person shall make a contract for building, altering or repairing any building or vessel, or for the construction or repair of a railroad, with the owner thereof, it shall be his duty to furnish to the owner or his agent, before receiving any part of the contract price, as it may become due, an itemized statement of the amount owing to any laborer,

mechanic or artisan employed by such contractor, architect or other person, or to any person for materials furnished, and upon delivery to the owner or his agent of the itemized statement aforesaid, it shall be the duty of the owner to retain from the money then due the contractor a sum not exceeding the price contracted for, which will be sufficient to pay such laborer, artisan or mechanic for labor done, or such person for material furnished, which said amount the owner shall pay directly to the laborer, mechanic, artisan or person furnishing materials. The owner may retain in his hands until the contract is completed, such sum as may have been agreed on between him and the contractor, architect or other person employing laborers, as a guaranty for the faithful performance of the contract by such contractor. When such contract has been performed by the contractor, such fund reserved as a guaranty shall be liable to the payment of the sum due the laborer, mechanic or artisan for labor done, or the person furnishing the materials as hereinbefore provided. Any laborer, mechanic, artisan or person furnishing materials may furnish to such owner or his agents before he shall have paid the contractor an itemized statement of the amount owing to such laborer, mechanic or artisan employed by said contractor, architect or other person for work or labor on such building, vessel or railroad, and any person may furnish to such owner or his agents an itemized statement of the amount due him for materials furnished for such purposes; and upon the delivery of such notice to such owner or his agent the person giving such notice shall be entitled to all the liens and benefits conferred by this section or by any other law of this state in as full and ample a manner as though the statement had been furnished by the contractor, architect or such other person.—Rev., 2021.

One who, under contract, assists the owner of a factory in purchasing machinery and superintends the erection of the same and putting the factory in working order, but does no manual labor himself, is not entitled to a lien—mechanic's or laborer's—under section 1781 of The Code.—Cook v. Ross, 117—193.

Subcontractors have no lien upon the owner of the premises until he is furnished with the statement required by sections 1801-2 of The Code, by the subcontractor, or by the contractor under acts 1887, c. 67.—Pinkston v. Young, 104—102.

2590. Sums due by statement, a lien.—The sums due to the laborer, mechanic or artisan for labor done, or due the person furnishing materials, as shown in the itemized statement rendered to the owner, shall be a lien on the building, vessel or railroad built, altered or repaired, without any lien being filed before a justice of the peace or the superior court.—Rev., 2022.

2591. Claims paid pro rata, when.—In the event the amount due the contractor by the owner shall be insufficient to pay in full the laborer, mechanic or artisan, for his labor, and the person furnishing materials for materials furnished, it shall be the duty of the owner to distribute the amount pro rata among the several claimants, as shown by the itemized statement furnished the owner.—Rev., 2023.

3. On Colts and Calves.

2592. Season of a sire a lien on.—In all cases where the owner, or any agent for or employee of the owner, of any mare, jennet or cow shall turn the same to a stud-horse, jack or bull for the purpose of raising colts or calves, the price charged for the season of the stud-horse, jack or bull shall constitute a lien on the colt or calf until the price so charged for the season is paid.—Rev., 2024.

2593. Not exempt from execution.—The colt or calf shall not be exempt from execution for the payment of said season price by reason of the operation of the personal property exemption: Provided, that the person claiming such lien shall institute action to enforce the same within twelve months from the foaling of the colt or dropping the calf.—Rev., 2025.

4. Proceedings to Enforce.

2594. Claims filed, when.—All claims against personal property, of two hundred dollars and under, may be filed in the office of the nearest justice of the peace; if over two hundred dollars or against any real estate or interest therein, in the office of the superior court clerk in any county where the labor has been performed or the materials furnished; but all claims shall be filed in detail, specifying the materials furnished or labor performed, and the time thereof. If the parties interested make a special contract for such labor performed, or if such material and labor are specified in writing, in such cases it shall be decided agreeably to the terms of the contract, provided the terms of such contract do not affect the lien for such labor performed or materials furnished.—Rev., 2026.

Note.—For duty of clerk, records, etc., see s. 915 (21) of Revisal.

For Johnston county act, see Laws 1907, c. 148.

The following filed claim was held to be a reasonable and substantial compliance with section 1784 of The Code: "J. S. C., owner and possessor, to D. A. C., October 22, 1894. To 122 1-2 days labor as sawyer at his sawmill on Jumping Run Creek, from 1st October, 1893, to August 31, 1894, \$127.24. D. A. C., claimant."—Cameron v. Lumber Co., 118—266.

A claim of lien must comply with the requirements of the statute; therefore when the plaintiff's claim failed to specify in detail the material furnished and labor performed, or the time when the material was furnished and the labor performed: held, to be irregular.—Wray v. Harris, 77—77.

2595. Action brought, when and where.—Action to enforce the lien created must be commenced in the court of a justice of the peace, and in the superior court, according to the jurisdiction thereof, within six months from the date of filing the notice of the lien: Provided, that if the debt be not due within six months but becomes due within twelve months, suit may be brought or other proceedings instituted to enforce the lien in thirty days after it is due.—Rev., 2027.

A notice of a claim to enforce a mechanic's lien, within the jurisdiction of a justice of the peace, may be filed with the clerk of the superior court.—Boyle v. Robbins, 71—130.

2596. Filed in twelve months.—Notice of lien shall be filed, as hereinbefore provided, at any time within twelve months after the completion of the labor, or the final furnishing the materials, or the gathering of the crops.—Rev., 2028.

Under section 1789 of The Code, providing that a mechanic's lien shall be filed within one year from the time of performing labor or furnishing material, a lien so filed will relate back to the time of furnishing the material, and will take precedence over a conveyance made after the time of such furnishing, but before the filing of the lien.—Burr v. Maultsby, 99—263.

2597. Execution.—Upon judgment rendered in favor of the claimant, an execution for the collection and enforcement thereof shall issue in the same manner as upon other judgments in actions arising on contract for the recovery of money only, except that the execution shall direct the officer to sell the right, title and interest which the owner had in the premises or the crops thereon, at the time of filing notice of the lien, before such execution shall extend to the general property of the defendant.—Rev., 2029.

Note.—For forms of execution, see s. 627 of Revisal.

2598. No justice's execution against land.—No execution issued by a justice of the peace, under this chapter, shall be enforced against real estate or any interest therein, but justices' judgments may be docketed on the judgment docket of superior court for the purpose of selling such estate or any interest there.—Rev., 2030.

2599. Attachment, remedy, when.—In all cases where the owner or employer attempts to remove the crop, houses or appurtenances from the premises, without the permission, or with the intent to defraud the lienee of his lien, the claimant may have a remedy by attachment.—Rev., 2031.

5. Rights of Defendant.

2600. Setoff and counterclaim.—The defendant in any suit to enforce the lien shall be entitled to any setoff arising between the contractors during the performance of the contract, or counterclaim allowed by law.—Rev., 2032.

2601. How liens discharged.—All liens created by this chapter may be discharged as follows:

1. By filing with the justice or clerk a receipt or acknowledgment, signed by the claimant, that the lien has been paid or discharged.

2. By depositing with the justice or clerk money equal to the amount of the claim, which money shall be held by said officer for the benefit of the claimant.

3. By an entry in the lien docket that the action on the part of the claimant to enforce the lien has been dismissed, or a judgment rendered against the claimant in such action.

4. By a failure of the claimant to commence an action for the enforcement of the lien within six months from the notice of lien filed.—Rev., 2033.

6. Priorities.

2602. Laborer's lien on crops.—The lien for work on crops given by this chapter shall be preferred to every other lien or incumbrance which attached to the crops subsequent to the time at which the work was commenced.—Rev., 2034.

2603. Date from notice of lien.—The liens created and established by this chapter shall be paid and settled according to the priority of the notice of the lien filed with the justice or the clerk.—Rev., 2035.

2604. Rights not affected.—Nothing in this chapter shall be construed to affect the rights of any person to whom any debt may be due for any work done for which priority of claim is filed with the proper officer.—Rev., 2036.

7. Hotels.

2605. May retain baggage, when; lien on.—Every hotel and boarding-house keeper who shall furnish board, bed or room to any person shall have the right to retain possession of and a lien upon all baggage or other property of such person that may have been brought to such hotel or boarding-house until all reasonable charges for such room, bed and board are paid.—Rev., 2037.

2606. Baggage sold, when.—If such charges are not paid within ten days after they become due then the hotel or boarding-house keeper is authorized to sell said baggage or other property at the courthouse door, after first advertising such sale for ten days at said courthouse door and three other public places in the county, and out of the proceeds of sale to pay the costs and expenses of sale and all costs and charges due for said board, bed or room, and the surplus, if any, pay to the owner of said baggage or other property.—Rev., 2038.

2607. Notice of sale.—Written notice of such sale shall be served on the owner of such baggage or other property ten days before such sale, if he be a resident of the state, but if he be a nonresident of the state, or if his residence be unknown, the publication of such notice for ten days at the courthouse door and three other public places in the county shall be sufficient service of the same.—Rev., 2039.

8. On Vessels.

2608. For towage.—Every vessel, boat, scow, lighter, flat, raft or other water craft, shall be subject to a lien for the payment of towage done by any steamboat or tug boat, to be filed and enforced as is provided for other liens.—Rev., 2040.

2609. For labor in loading and unloading.—Every vessel, her tackle, apparel and furniture shall be subject to a lien for all labor done by contractors or others in loading or discharging the cargo of such vessel, and also for all labor done by any subcontractor or laborer employed in discharging or loading any such vessel, when such labor is done under contract with a contractor or stevedore who may be employed by the master, agent or owner of such vessel.—Rev., 2041.

2610. How filed; notice to master.—The liens provided for in the preceding sections shall be filed as is provided for other liens.—The subcontractor or laborer may give notice to the master, agent or owner of such vessel, that the contractor or stevedore is or will become indebted to him, when it shall be the duty of such master, agent or owner of such vessel to retain out of the amount due to such contractor or stevedore under his contract, as much as shall be due or claimed by the person giving the notice, and after such notice is given no payment to the contractor or stevedore shall be a credit on or discharge of the lien herein provided.—Rev., 2042.

2611. How enforced.—The enforcement of such lien shall be by summons against the contractor or stevedore, and also against the master, agent or owner of such vessel, who made the contract with such contractor or stevedore, if over two hundred dollars, to be issued by the clerk of the superior court, and if under two hundred dollars, by a justice of the peace.—Rev., 2043.

2612. Judgment against contractor, a judgment against master and vessel.—The judgment against the contractor or stevedore shall also be a judgment against the master, agent or owner of such vessel, and also against such vessel itself, her tackle, apparel and furniture, which shall be seized, held and sold under execution for the satisfaction of such judgment.—Rev., 2044.

2613. Liens not to exceed amount due contractor.—The sum total of all the liens due to different subcontractors and laborers, performed for any contractor or stevedore under any contract with any master, agent or owner of any vessel, shall not exceed the amount due to such contractor or stevedore at the time of notice given to such owner, agent or master, or the amount due to such contractor or stevedore at the time of the service of summons upon such master, agent or owner when no notice has been given.—Rev., 2045.

2614. Owner to see laborers paid.—In all cases where steamships or vessels of any kind are loaded or unloaded or where any work is done in or about the same by the contractors to do the same known as stevedores or "boss stevedores," who in doing the same shall employ laborers to assist or do the work by the hour, day, week or month, it shall be the duty of the owner or agent of the vessel to see that the laborers employed in or about the same by the stevedore, contractor or "boss stevedore" are fully paid the wages that may be due such laborer before he shall make final settlement with the contractor, stevedore or "boss stevedore."—Rev., 2046.

2615. May refuse settlement with contractor till laborers paid.—Any owner or agent referred to in the preceding section shall have power to refuse final settlement with the "boss stevedore" or contractor until he or they shall satisfy the said owner or agent, by written oath if necessary, that the same has been done.—Rev., 2047.

2616. Owner may pay orders for wages.—It shall be lawful for the owner or agent of such vessel to pay off from time to time such orders for wages as may be due and given therefor in favor of the laborers by the contractor or stevedore, which on final settlement may be deducted from the contract price.—Rev., 2048.

2617. Laborers may sue owner, when.—Any owner or agent of such vessel who shall neglect or refuse to comply with the preceding provisions shall be liable to such laborer in a civil action for the amount of the wages so due him by the contractor, stevedore or "boss stevedore."—Rev., 2049.

2618. Contractors for loading vessels licensed.—No person shall engage in the business of loading or unloading vessels upon contract, nor shall any person solicit or make any contract for himself or for any other person to load or unload any vessel either by day's work or by the job, without having previously obtained a license therefor, in the manner provided by law for other licenses for trades and occupations.—Rev., 2050.

2619. Tax and bond.—Before the sheriff shall issue the said license the applicant shall pay to the sheriff an annual tax of fifty dollars, and shall execute a bond with two or more approved sureties in the sum of two thousand dollars, payable to the State of North Carolina, and conditioned for the faithful performance of his duties and the due and lawful payment of all sums due to laborers assisting in the work of loading or unloading any vessels upon which the applicant may be engaged. And every bond so taken shall be renewed annually, and shall be filed with and preserved by the register of deeds in trust for every person that shall be injured by the breach of his contracts, who may severally bring suit thereon for the damages by each one sustained.—Rev., 2051.

9. Agricultural Liens.

2620. On crops for advances.—If any person shall make any advance either in money or supplies to any person who is engaged in or about to engage in the cultivation of the soil, the person so making such advance shall be entitled to a lien on the crops which may be made during the year upon the land in the cultivation of which the advance so made has been expended, in preference to all other liens existing or otherwise, except the laborer's and landlord's liens, to the extent of such advance: Provided, an agreement in writing shall be entered into before any such advance is made to this effect, in which shall be specified the amount to be advanced, or in which a limit shall be fixed beyond which the advance, if made from time to time during the year, shall not go; which agreement shall be registered in the office of the register of the county in which the person to whom the advance is made resides, within thirty days after its date.—Rev., 2052.

A crop lien to secure advances is valid *inter partes*, although not registered within thirty days as required by the statute.—*Gay v. Nash*, 78—100.

An agricultural lien must be in strict conformity with the statute. The lien must be in writing, and executed before the advancements or supplies are furnished.—*Patapsco Co. v. Magee*, 84—350.

Where a mortgagee in possession has given a lien upon the crops for advances to aid in cultivating them, such lien is superior to that of the mortgagee of the land.—*Hinton v. Walston*, 115—7.

Under a mortgage on a crop of cotton "for supplies," where it does not appear how, or on what account, or for what purpose, the supplies were furnished, the mortgagee acquires no preference over a prior mortgagee, under section 1799 of The Code, providing for such a preference for advances.—*Brown v. Miller*, 108—395.

2621. Lien created by mortgagors in possession.—The preceding section shall apply to all contracts made for the advancement of money and supplies, or either, for the purposes herein specified by mortgagors or trustors who may be in possession of the lands mortgaged or conveyed in trust at the time of the making of the contract for such advancement of money or supplies, either in case the debts secured in said mortgage or deed of trust be due or not.—Rev., 2053.

2622. Crops seized and sold, when; issue made up for trial.—If the person making such advances shall make an affidavit before the clerk of the superior court of the county in which such crops are,

that the amount secured by said lien for such advances, or any part thereof, is due and unpaid, that the person to whom such advances have been made, or any other person having the said crop in his possession, is about to sell or dispose of his crop, or in any other way is about to defeat the lien hereinbefore provided for, accompanied with a statement of the amount then due, it shall be lawful for him to issue his warrant, directed to any of the sheriffs of this state, requiring them to seize the said crop, and, after due notice, sell the same for cash and pay over the net proceeds thereof, or so much thereof as may be necessary in the extinguishment of the amount then due: Provided, that if the person to whom such advances have been made, or any person claiming an interest in the crops, shall, within thirty days after such sale has been made, give notice in writing to the sheriff, accompanied with an affidavit to this effect, that the amount claimed is not justly due, then it shall be the duty of the said sheriff to hold the proceeds of such sale subject to the decision of the court, upon an issue which shall be made up and set down for trial at the next succeeding term of the superior court of the county in which the person to whom such advances have been made resides: Provided further, that the lien provided in this and the preceding sections shall not affect the rights of lahdlords or laborers.—Rev., 2054.

2623. Short form in certain counties.—For the purpose of creating a valid agricultural lien under the preceding sections for supplies to be advanced and also to constitute a valid chattel mortgage as additional security thereto, and to secure a pre-existing debt, the following or a substantially similar form shall be deemed sufficient, and for those purposes legally effective, in the counties of Alamance, Alleghany, Ashe, Beaufort, Bladen, Brunswick, Buncombe, Burke, Cabarrus, Carteret, Caswell, Catawba, Chowan, Columbus, Craven, Cumberland, Davie, Davidson, Duplin, Durham, Edgecombe, Franklin, Forsyth, Gaston, Gates, Granville, Halifax, Harnett, Hertford, Hyde, Iredell, Johnston, Jones, Lenoir, Lincoln, Martin, McDowell, Mecklenburg, Moore, Nash, New Hanover, Northampton, Onslow, Pender, Pamlico, Person, Pitt, Polk, Richmond, Robeson, Rockingham, Rowan, Rutherford, Sampson, Scotland, Transylvania, Tyrrell, Union, Vance, Watauga, Washington, Wayne and Wilson:

North Carolina, County.

Whereas, ha.... agreed to make advances to
.....for the purpose of enabling said.....to cultivate the lands
hereinafter described during the year 19..., the amount of said advances not to exceed dollars; and,

Whereas, said is indebted to said in the further sum of.....dollars now due; now therefore, in order to secure the payment of the same the said do.... hereby convey to said all the crops of every description which may be raised during the year 19.... on the following lands in.....
.....County, North Carolina,Township, adjoining the lands of....., and also the following other property, viz.:

.....
..... And if by the..... day of....., 19..., said..... fail... to pay said indebtedness, then said may foreclose this lien as provided in section two thousand and fifty-four or otherwise, and may sell said crops and other property after ten days' notice posted at the court-house door and three other public places in said county, and apply the proceeds to the payment of said indebtedness and all costs and expenses of executing this conveyance, and pay the surplus to said....., and the said..... hereby represents that said crops and other property are the absolute property of..... and free from incum-

brance..... Witness, hand.... and seal, this the
..... day of....., 19....

Witness:.....

....., owner of the lands described in the foregoing instrument, in consideration of the advances to be made, as therein provided, do.... hereby agree to waive and release my lien as landlord upon said crops to the extent of said advances made to said

This the day of, 19....

Witness:

..... (Seal).

North Carolina, County.

The due execution of the foregoing instrument was this day proven before me by the oath and examination of....., the subscribing witness thereto.

This theday of, 19....

..... (Seal).

North Carolina, County.

The foregoing certificate of, a of County, is adjudged to be correct. Let the instrument with the certificate be registered.

This theday of, 19....

.....,
Clerk Superior Court.

—Rev., 2055.

Note.—For acts applicable to Wake county, see Laws 1899, c. 247, Laws 1907, c. 843.

2624. Rights on failure to cultivate crops.—If any person in the counties mentioned in the preceding section, after executing a lien as aforesaid for advances, shall fail to cultivate the lands described therein, or shall do any other act calculated to impair the security therein given, then the person to whom the lien was executed shall be relieved from any further obligation to furnish supplies, and the debts and advances theretofore made shall become due and collectible at once, and the person to whom the instrument was executed may proceed to take possession of, cultivate and harvest said crops, and to sell the other property described therein. It shall not be necessary to incorporate such power in the instrument, but this section shall be sufficient authority for the same: Provided, that the sale of any property described in any instrument executed under the provisions of this chapter may be made at any place in the county where such property is situated after ten days' notice published at the courthouse door and three other public places in said county.—Rev., 2056.

2625. Commissioners to furnish blank records.—The board of commissioners of the said counties shall have record books made with the aforesaid forms printed therein, and the cost of said books and of the printing of said forms, and of such other said books as may be hereafter required, shall be paid by the respective counties, and furnished to the register of deeds.—Rev., 2057.

Note.—For fees for probating and registering lien bonds, see Official Fee Bill.

For laborer's lien on corporate assets, see Corporations, s. 1206 of Revisal.

For power to take crops, see ss. 790, 2054 of Revisal.

For landlord's lien, see Landlord and Tenant, s. 2562 infra.

For lien of docketed judgment, see s. 574 of Revisal.

For lien of docketed judgments of justices of the peace, see s. 1479 of Revisal.

For lien upon land for improvements made, see s. 658 of Revisal.

Debts which are liens on decedent's property paid by administrator, see s. 87 of Revisal.

CHAPTER XLIV.

LIQUORS.

1. Manufacture.

2626. Place.—No person shall manufacture or rectify for gain any spirituous, vinous or malt liquors or intoxicating bitters within the State of North Carolina except in incorporated cities and towns having not less than one thousand population, wherein the manufacture of liquor is not or may not hereafter be prohibited by law or regulated by special statute.—Rev., 2058.

2627. Government and police force; duties.—Every incorporated city or town in which spirituous, vinous or malt liquors or intoxicating bitters are permitted to be sold or manufactured under the provisions of this chapter shall maintain a town or city government as provided in its charter of incorporation and a police force of not less than two policemen; and it shall be the duty of some member of said police force to visit every place where liquor is sold or manufactured in such city or town at least once every week and make a careful and thorough inspection and examination thereof, with a view of ascertaining whether the laws regulating the manufacture and sale of liquor are observed and obeyed and whether the said business is conducted in an orderly and lawful manner, and to make a written report setting forth the result of said visitation to the mayor and board of aldermen or other governing authorities of such city or town, which report or several reports the said mayor shall deliver to the solicitor of the district on or before the assembling of the ensuing term of the superior court of the county in which such town or city is situated; and in case such town or city shall fail to maintain a city government or provide the police force, investigations and report herein prescribed, the board of commissioners of the county in which the same is situated may revoke and cancel the license and permission authorizing the sale and manufacture of liquor in such town or city.—Rev., 2059.

2628. License from United States as evidence.—The possession of or issuance to any person of a license to manufacture, rectify or sell, at wholesale or retail, spirituous or malt liquors by the United States government or any officer thereof in any county, city or town where the manufacture, sale or rectification of spirituous or malt liquors is forbidden by the laws of this state shall be prima facie evidence that the person having such license, or to whom the same was issued, is guilty of doing the act permitted by the said license in violation of the laws of this state; and on the trial of any person charged with a violation of any such laws, it shall be competent to prove that such a license is in the possession of or has been issued to said person, by the testimony of any witness who has personally examined the records of the government office where the official record of such licenses are kept.—Rev., 2060; Laws 1907, c. 931.

2629. Wine or cider from fruits.—The manufacture of wine or cider from grapes, berries, or other fruits raised on the lands of the manufacturer, or purchased by him from the growers thereof, or of brandy manufactured from fruits and sold in original packages of not less than five gallons, shall not be restricted to incorporated towns and cities, but the same may be manufactured in any place where such manufacture is not otherwise forbidden by law.—Rev., 2061.

2. License.

2630. Necessary.—No person shall sell or otherwise dispose of for gain any spirituous, vinous or malt liquors, or intoxicating bitters without first obtaining, as provided by law, a license so to do. Nothing

in this section shall prevent any person from selling brandy manufactured by the seller from fruit or grapes and sold in original packages of not less than five gallons; nor shall prevent any person from selling wines of his own manufacture at the place of manufacture, or within one hundred yards thereof, in quantities of not less than one gallon; but such manufacturer may sell wine to churches for communion services in any quantity.—Rev., 2062.

2631. Issued to druggists outside of towns.—All druggists may sell spirituous, vinous and malt liquors for use by a sick person upon the written prescription of a legally qualified physician having such person under his charge, and not otherwise. No druggist shall duplicate the prescription of a physician for intoxicating liquors. All druggists selling liquors by prescription shall keep a record thereof showing the true date of sale, the name of the person for whom sold, the name of the person to whom delivered, and the quantity sold, which record shall at all times be open to the inspection of any person desiring to see it. Nothing in this section shall be construed so as to relieve druggists from complying with the law as to license and taxes.—Rev., 2063.

2632. Application for.—Every person desiring to sell liquors shall make application to the board of county commissioners for an order to the sheriff to issue license. The application shall be in writing and shall show that the applicant is a bona fide citizen of the United States and a legal voter of North Carolina; that he has never been convicted nor confessed his guilt in a court of competent jurisdiction, of any violation of the laws of any state regulating the sale of liquors; and the place where the business is to be carried on, which in all cases (druggists excepted) must be within an incorporated town or city, and more than two hundred feet in a direct line from any church edifice or the premises pertaining thereto. The application must have been approved before filing by the board of commissioners, aldermen or governing body by whatever name called, of the city or town in which it is proposed to carry on the business, and must be accompanied by the affidavit of six freeholders who are tax payers and residents of the township in which the applicant proposes to do business, all of whom shall declare upon oath that the applicant is a proper person to sell spirituous, vinous or malt liquors; that the building specified is a suitable place for the business to be carried on, and that he has not recommended any other person for liquor license in the same township.—Rev., 2064.

2633. Hearing, and order for.—At the hearing of the application by the board of county commissioners any person who may consider himself aggrieved by the granting of the license applied for may contest the same and may produce evidence in contradiction of any of the allegations of the application or show any other reason why the license should not be granted. If satisfied of the truth of the allegations of the application and affidavit, the board of county commissioners may grant an order to the sheriff to issue such license, except in territory where the sale of liquor is prohibited by law.—Rev., 2065.

2634. Form and issuing.—The license shall be printed in such form as the treasurer of the state may prescribe and furnished by the register of deeds, and shall be issued by the sheriff upon order of the board of county commissioners after the payment of the taxes required by law. Any person, taking out license as provided in this chapter on any date after the first day of July or January, shall pay the whole amount of tax for the six months ending the thirty-first day of December, or the thirtieth day of June, as the case may be, after the date of license.—Rev., 2066.

2635. Posted in place of business.—All persons taking out license to sell spirituous, vinous or malt liquors, or any mixture thereof, shall

post up in some public place in their place of business the license issued to them. Any person failing to post up the license as provided in this section shall be considered as doing business without license.—Rev., 2067.

2636. Revoked.—The board of county commissioners, upon complaint made by any resident of the county that any person holding a license under this chapter has violated the laws of this state regulating the sale of liquors, shall forthwith summon such person to appear before them at a time given, within thirty days, to show cause why such license and the order to issue same should not be revoked, and upon satisfactory evidence of his guilt, shall revoke any license heretofore granted by them.—Rev., 2068.

3. Local Option Elections.

2637. When ordered, what submitted.—It shall be the duty of the governing body of any city or town, upon the petition of one-third of the registered voters therein, who were registered for the preceding municipal election, to order an election to be held, after thirty days notice, in any year in which the petition may be filed, except within ninety days of any city, county or general election, in time for the notice to be given as above required, to determine—(1) Whether intoxicating liquors shall be manufactured in such city or town; (2) whether barrooms or saloons shall be established in such city or town; (3) whether dispensaries shall be established in such city or town; (4) whether intoxicating liquors shall be sold in said city or town. And any such election may be ordered to determine any one or two or all of such questions, as the petitioners may designate in their petition. No such election shall be held oftener than once in two years.—Rev., 2069; Laws 1907, c. 709.

2638. How conducted.—Whenever such election shall be held, it shall be conducted and held under the provisions of law regulating municipal elections.—Rev., 2070.

2639. Boxes provided, what tickets voted.—Whenever the governing body of any city or town shall order any such election, they shall provide one box to determine the question of manufacture of liquors, if such question is to be voted upon; one box to determine the sale by saloons, if such question is to be voted upon; and one box to determine the sale by dispensaries if such question is to be voted upon. Any person entitled to vote for members of the general assembly shall have the right to vote at such elections in all the boxes provided, and every such voter who is in favor of the manufacture of intoxicating liquors shall vote a ticket on which shall be written or printed the words "For Distilleries," and all opposed to the manufacture of intoxicating liquors shall vote a ticket on which shall be written or printed the words "Against Distilleries"; and every such voter who is in favor of barrooms or saloons shall vote a ticket on which shall be written or printed the words "For Saloons," and all opposed to them shall vote a ticket on which shall be written or printed the words "Against Saloons"; and every such voter who is in favor of dispensaries shall vote a ticket on which shall be written or printed the words "For Dispensaries," and all opposed to them shall vote a ticket on which shall be written or printed the words "Against Dispensaries"; and every such voter who is opposed to both dispensaries and barrooms and saloons shall vote a ticket on which shall be written or printed the words "For Prohibition." Such tickets shall be of white paper and without device.—Rev., 2071; Laws 1907, c. 709.

2640. Distilleries, when allowed.—If a majority of the votes cast in any such election shall be "Against Distilleries," when that question is voted upon, then it shall be unlawful for any person to manufacture

any intoxicating liquors in such city or town until another election shall be held reversing such election. But if a majority of the votes cast in any such election in any city or town shall be "For Distilleries," then it shall be lawful to manufacture and sell at wholesale intoxicating liquors in such city or town. This section shall not be construed to authorize the manufacture of intoxicating liquors in any town except upon a full compliance with the conditions and requirements which may now or hereafter be imposed by law.—Rev., 2072.

2641. Saloons, when licensed.—If a majority of the votes in any such election in any city or town shall be "Against Saloons," then it shall be unlawful for the county commissioners of any such county, or the governing body of any such town, to grant license to any person for the sale of spirituous, vinous, malt or other intoxicating liquors whatever in such city or town until another election shall be held reversing such election: Provided, that liquor dealers in such cities or towns holding license at the time of the election shall be allowed six months after such election in which to close out their stock on hand at the time of such election, if their license so long remain in force. But if a majority of any such votes cast in any such election shall be "For Saloons," then the board of county commissioners of such county, and the governing body of such city or town, shall grant license to sell intoxicating liquors in such city or town to all proper persons applying for the same according to law. And such license shall be granted until another election shall be held reversing such election: Provided further, that this section shall not be construed to authorize any person to sell, either by retail or wholesale, intoxicating liquors in such city or town, except upon a full compliance with the conditions and requirements which may now or hereafter be imposed by law.—Rev., 2073.

4. Dispensaries.

2642. When established.—If a majority of the votes cast at any such election shall be "Against Dispensaries," then it shall be unlawful to establish any dispensary in such city or town until another election shall be held reversing such election. But if a majority of the votes cast at any such election be "For Dispensaries," then the board of commissioners of such city or town shall establish a dispensary therein. And in cases where dispensaries or bar-rooms or saloons have been in existence, and upon an election held as herein provided, the majority of the votes cast shall be "For Prohibition," then such dispensary, bar-room or saloon shall be discontinued, and no dispensary, bar-room or saloon shall be established until another election shall be held reversing such election.—Rev., 2074; Laws 1907, c. 709.

2643. Commissioners appointed.—Whenever it shall become lawful under the provisions of this chapter to establish a dispensary in any city or town, the governing body of such city or town shall appoint three commissioners from the voters of such city or town, who, in the election, voted for dispensaries, whose duty it shall be to conduct such dispensaries under such rules and regulations, and with such officers and employees, as may be prescribed and allowed by the governing body of such city or town, who shall fix the compensation of said commissioners and their officers and employees. No person shall be eligible to election or appointment as a dispensary commissioner, whether the dispensary has been or may be established under a general or special act, unless in the election he voted for dispensary, if election on said ground was held.—Rev., 2075; Laws 1907, c. 932.

2644. Terms of office fixed; removal; bonds.—The governing body of any city or town in which a dispensary shall be established under the provisions of this chapter, shall have power to fix the terms of office of the dispensary commissioners, and determine the amount of

bonds required from the commissioners and officers, and shall have the power to remove any or all commissioners and any officers or employees appointed by such commissioners, for good cause shown.—Rev., 2076.

2645. Sales in, how made.—No liquor of any kind shall be sold in any dispensary on Sunday or election days, and no dispensary shall ever be open or liquor sold therein before sunrise or after sunset on any day. The prices at which liquor shall be sold shall be fixed by the dispensary commissioners. All sales shall be for cash and at a profit not to exceed eighty per centum of the cost thereof. No liquor shall be sold in any dispensary except in unbroken packages or bottles, which shall contain not less than one-half pint and not more than one quart. The manager of a dispensary shall prohibit loafing, loitering or drinking on the premises. It shall be the duty of the manager, when ordered by the board of dispensary commissioners, to keep a register, on which shall be kept a record of the names of persons to whom any liquors are sold, the quantity sold, price paid, and date of sale. Such register shall be open only to the inspection of the dispensary commissioners and its employees, and the contents thereof shall not be published. No intoxicating liquors shall be sold to any minors, and the dispensary commissioners shall make such rules and regulations not inconsistent with this chapter as may be proper for the management of the dispensary.—Rev., 2077.

2646. Unlawful to sell except in dispensary.—In any town in which a dispensary is established under the provisions of this chapter, it shall be unlawful for any person to sell or otherwise dispose of for gain any intoxicating liquors other than in the manner provided for sales in the dispensary as aforesaid.—Rev. 2077a.

2647. Proceeds disposed of.—The dispensary commissioners shall make quarterly settlements with the governing body of the city or town in which any dispensary may be situated, and such governing body shall, within ten days after such settlement, pay one-half of the net profits of such dispensary into the treasury of such city or town, and the other half into the treasury of the county in which such city or town is located, for the benefit of the public schools of said county.—Rev., 2078.

5. Special Acts.

2648. Not repealed.—Nothing in this chapter shall be construed to repeal, alter or amend any special act prohibiting or regulating the sale of liquors in any locality, township, county or incorporated city or town, or the manufacture of liquors in any incorporated city or town having not less than one thousand population.—Rev., 2079.

2649. Place of delivery place of sale.—The place where delivery of any spirituous, malt, vinous, fermented or other intoxicating liquors is made in the state of North Carolina shall be construed and held to be the place of sale thereof; and any station or other place within said state to which any person shall ship or convey any spirituous, malt, vinous, fermented or other intoxicating liquors for the purpose of delivering or carrying the same to a purchaser shall be construed to be the place of sale: Provided, that this section shall not be construed to prevent the delivery of any spirituous, malt, vinous, fermented or other intoxicating liquors to druggists in sufficient quantities for medical purposes only: Provided further, that this section shall not be construed to prevent the shipment of such intoxicating liquors to duly licensed dealers in the same in any town or city where the sale of such liquors is not prohibited by law. All liquors or mixtures thereof, by whatever name called, that will produce intoxication shall be construed and held to be intoxicating liquors within the meaning of this section:

Provided, that this section shall apply to the following counties and townships in North Carolina, and none other, viz.: The counties of Alleghany, Ashe, Burke, Bertie, Bladen, Brunswick, Buncombe, Cabarrus, Caldwell, Carteret, Catawba, Cherokee, Cleveland, Craven, Cumberland, Davidson, Duplin, Durham, Forsyth, Franklin, Gaston, Gates, Graham, Guilford, Harnett, Haywood, Hyde, Iredell, Johnston, Lincoln, Macon, Mecklenburg, Mitchell, Montgomery, Moore, Northampton, Orange, Perquimans, Randolph, Robeson, Rutherford, Scotland, Swain, Union, Vance, Wake, Warren, Watauga and Yancey; and in Goldsboro township and the town of Mt. Olive, Wayne county; Nashville and Manning townships in Nash county; Lake Waccamaw, Pine Bluff, Whiteville, Chadbourn and Tatum townships in Columbus county, and Kinston township in Lenoir county; Alexander county.—Rev., 2080; Laws 1907, cc. 80, 29, 139, 541, 600.

CHAPTER XLV.

MARRIAGE.

1. How Contracted.

2650. What constitutes.—The consent of a male and female person who may lawfully marry, presently to take each other as husband and wife, freely, seriously and plainly expressed by each in the presence of the other, and in the presence of an ordained minister of any religious denomination or of a justice of the peace, and the consequent declaration by such minister or officer that such persons are man and wife, shall be a valid and sufficient marriage: Provided, that the right of marriage among the Society of Friends, according to a form and custom peculiar to themselves shall not be interfered with by the provisions of this or any other section of this chapter.—Rev., 2081.

2. Contracting Parties.

2651. Who may marry.—All unmarried male persons of sixteen years, or upwards, of age, and all unmarried females of fourteen years, or upwards, of age, may lawfully marry, except as hereinafter forbidden.—Rev., 2082.

2652. Who may not marry.—All marriages between a white person and a negro or indian, or between a white person and person of negro or indian descent to the third generation, inclusive, or between a Croatan indian and a negro, or between a Croatan indian and a person of negro descent to the third generation, inclusive, or between any two persons nearer of kin than first cousins, or between a male person under sixteen years of age and any female, or between a female person under fourteen years of age and any male, or between persons either of whom has a husband or wife living at the time of such marriage, or between persons either of whom is at the time physically impotent, or is incapable of contracting from want of will or understanding, shall be void: Provided, that no marriage followed by cohabitation and the birth of issue shall be declared void after the death of either of the parties for any of the causes stated in this section, except for that one of the parties was a white person, and the other a negro or indian, or of negro or indian descent to the third generation, inclusive, and for bigamy.—Rev., 2083.

Note.—See Divorce and Alimony, s. 1560 of Revisal.

2653. Prohibited degrees of kinship.—Whenever the degree of kinship shall be estimated with the view to ascertain the right of kinspeople to marry, the half-blood shall be counted as the whole-blood:

Provided, that nothing herein contained shall be so construed as to invalidate any marriage heretofore contracted in case where by counting the half-blood as the whole-blood the persons contracting such marriage would be nearer of kin than first cousins; but in every such case the kinship shall be ascertained by counting relations of the half-blood as being only half so near kin as those of the same degree of the whole blood.—Rev., 2084.

2654. Marriages between slaves validated.—Persons, both or one of whom were formerly slaves, who have complied with the provisions of section five, chapter forty, of the acts of the general assembly, ratified March tenth, one thousand eight hundred and sixty-six, shall be deemed to have been lawfully married.—Rev., 2085.

3. The License.

2655. Unlawful to perform ceremony without.—No minister or officer shall perform a ceremony of marriage between any two persons, or shall declare them to be man and wife, until there shall be delivered to him a license for the marriage of the said persons, signed by the register of deeds of the county in which the marriage is intended to take place, or by his lawful deputy.—Rev., 2086.

2656. Penalty for performing ceremony without.—Every minister or officer who shall marry any couple without a license being first delivered to him, as required by law, or after the expiration of such license, or who shall fail to return such license to the register of deeds within two months after any marriage celebrated by virtue thereof, with the certificate appended thereto duly filled up and signed, shall forfeit and pay two hundred dollars to any person who shall sue therefor.—Rev., 2087.

A marriage under an invalid license, or with no license, would be good, if valid in other respects. The only effect of marrying a couple without a legal license is to subject the officer or minister to the penalty of \$200 prescribed by The Code, s. 1817.—Maggett v. Roberts, 112—71.

2657. Issued by register of deeds.—Every register of deeds shall, upon application, issue a license for the marriage of any two persons: Provided, it shall appear to him probable that there is no legal impediment to such marriage: Provided further, that where either party to the proposed marriage shall be under eighteen years of age, and shall reside with the father, or mother, or uncle, or aunt, or brother, or elder sister, or shall reside at a school, or be an orphan and reside with a guardian, the register shall not issue a license for such marriage until the consent in writing of the relation with whom such infant resides, or, if he or she resides at a school, of the person by whom said infant was placed at school, and under whose custody and control he or she is, shall be delivered to him, and such written consent shall be filed and preserved by the register. And whenever it shall appear to the register of deeds that it is probable there is any legal impediment to the marriage of any person for whom a license is applied he shall have power to administer to the person so applying an oath touching the legal capacity of said parties to contract a marriage.—Rev., 2088.

2658. Form of license.—License shall be in the following or some equivalent form:

To any ordained minister of any religious denomination, or to any justice of the peace for county: A. B. having applied to me for a license for the marriage of C. D. (the name of the man to be written in full) of (here state his residence, aged years (race, as the case may be), the son of (here state the father and mother, if known; state whether they are living or dead, and their residence, if known; if any of these facts are not known, so state), and E. F. (write the name of the woman in full) of (here state her residence), aged

years (race, as the case may be), the daughter of (here state the names and residences of the parents, if known, as is required above with respect to the man). (If either of the parties shall be under eighteen years of age, the license shall here contain the following:) And the written consent of G. H., father (or mother, etc., as the case may be) to the proposed marriage having been filed with me, and there being no legal impediment to such marriage known to me, you are hereby authorized, at any time within one year from the date hereof, to celebrate the proposed marriage at any place within the said county. You are required, within two months after you shall have celebrated such marriage, to return this license to me at my office with your signature subscribed to the certificate under this license, and with the blanks therein filled according to the facts, under penalty of forfeiting two hundred dollars to the use of any person who shall sue for the same.

Issued this day of, 19.... L. M.,

Register of Deeds of County.

Every register of deeds shall designate in every marriage license issued the race of the persons proposing to marry by inserting in the blank after the word "race" the words "white," "colored" or "indian" as the case may be. The certificate shall be filled up and signed by the minister or officer celebrating the marriage, and also be signed by one or more witnesses present at the marriage, who shall add to their names their places of residence, as follows:

I, N. O., an ordained minister of (here state to what religious denomination, or justice of the peace, as the case may be), united in matrimony (here name the parties), the parties licensed above, on the day of, 19...., at the house of P. R., in (here name the town, if any, the township and county), according to law. N. O.

Witnesses present at the marriage:

S. T., of (here give the residence).—Rev., 2089.

2659. Penalty for issuing unlawfully.—Every register of deeds who shall knowingly or without reasonable inquiry, personally or by deputy, issue a license for the marriage of any two persons to which there is any lawful impediment, or where either of the persons is under the age of eighteen years, without the consent required by law, shall forfeit and pay two hundred dollars to any parent, guardian, or other person standing in loco parentis who shall sue for the same.—Rev., 2090.

2660. Record of, kept by register of deeds; original filed.—Every register of deeds shall keep a book (which shall be furnished on demand by the board of county commissioners of his county) on the first page of which shall be written or printed:

"Record of marriage licenses and of returns thereto, for the county of, from the day of, 19...., to the day of, 19...., both inclusive."

In said book shall be entered alphabetically according to the names of the proposed husbands, the substance of each marriage license and the return thereupon as follows: The book shall be divided by lines with columns which shall be properly headed, and in the first of these, beginning on the left, shall be put the date of issue of the license; in the second, the name in full of the intended husband, with his residence; in the third, his age; in the fourth, his race and color; in the fifth, the name in full of the intended wife, with her residence; in the sixth, her age; in the seventh, her race and color; in the eighth, the name and title of the minister or officer who celebrated the marriage; in the ninth, the day of the celebration; in the tenth, the place of the celebration; in the eleventh, the names of all or at least three of the

witnesses who signed the return as present at the celebration. The original license and return thereto shall be filed and preserved.—Rev., 2091.

2661. Penalty for failure to record license and the return.—Any register of deeds who shall fail to record, in the manner above prescribed, the substance of any marriage license issued by him, or who shall fail to record, in the manner above prescribed, the substance of any return made thereon, within ten days after such return made, shall forfeit and pay two hundred dollars to any person who shall sue for the same.—Rev., 2092.

4. Certain Marriages Validated.

2662. Performed by licensed but unordained ministers.—All marriages heretofore solemnized by ministers of the gospel who were licensed, but not ordained, are hereby validated and made binding and effective from their consummation.—Laws 1907, c. 529 (ratified March 4, 1907).

CHAPTER XLVI.

MARRIED WOMEN.

1. Separate Estate of.

2663. Secured; disposed of by will; conveyed with husband's written assent.—The real and personal property of any female in this state, acquired before marriage, and all property, real and personal, to which she may, after marriage, become in any manner entitled, shall be and remain the sole and separate estate and property of such female, and shall not be liable for any debts, obligations or engagements of her husband, and may be devised and bequeathed, and, with the written assent of her husband, conveyed by her as if she were unmarried.—Rev., 2093.

Note.—For purchase-money mortgagee executed by husband alone, see s. 3342 *infra*.

2664. Can not contract without husband's consent.—No woman during her coverture shall be capable of making any contract to affect her real or personal estate, except for her necessary personal expenses, or for the support of the family, or such as may be necessary in order to pay her debts existing before marriage, without the written consent of her husband, unless she be a free trader, as hereinafter allowed.—Rev., 2094.

Note.—For laborer's and material liens against, see s. 2584 *infra*.

2665. May draw checks.—Bank deposits made by or in the name of a married woman shall be paid only to her or on her order, and her check, receipt or acquittance shall be valid in law to fully discharge the bank from any and all liability on account thereof.—Rev., 2095.

2666. What leases require joinder of husband and privy examination.—No lease or agreement for a lease or sublease or assignment by any married woman, not a free trader, of her lands or tenements, or chattels real, to run for more than three years, or to begin in possession more than six months after its execution, or any conveyance of any freehold estate in her real property, shall be valid, unless the same be executed by her and her husband, and proved or acknowledged by them, and her free consent thereto, appear on her examination separate from her husband, as is now or may hereafter be required by law in the probate of deeds of *femes covert*.—Rev., 2096.

2667. Land of, not sold or leased without their consent; husband's interest exempt from execution.—No real estate belonging at the time of marriage to females, married since the third Monday of November,

one thousand eight hundred and forty-eight, nor any real estate by them subsequently acquired, nor any real estate acquired on and since the first day of March, one thousand eight hundred and forty-nine, by *femes covert*, who were such on the said third Monday of November, one thousand eight hundred and forty-eight, shall be subject to be sold or leased by the husband for the term of his own life or any less term of years, except by and with the consent of his wife, first had and obtained, to be ascertained and effectuated by deed and privy examination, according to the rules required by law for the sale of lands belonging to *femes covert*. And no interest of the husband whatever in such real estate shall be subject to sale to satisfy any execution obtained against him; and every such sale is hereby declared null and void.—Rev., 2097.

2668. May make a will.—Every married woman shall have power to devise and bequeath her real and personal estate as if she were a *feme sole*; and her will shall be proved as is required of other wills.—Rev., 2098.

Where a *feme covert* dies intestate her husband is entitled to his common law right of curtesy; where she devises her land, under section 6, article 10, of the constitution, the estate of curtesy is destroyed. The common law right or estate of the husband as tenant by the curtesy initiate is abolished.—*Tiddy v. Graves*, 126—620.

2669. May insure husband's life.—Any *feme covert* in her own name, or in the name of a trustee with his assent, may cause to be insured for any definite time the life of her husband, for her sole and separate use, and she may dispose of the interest in the same by will, notwithstanding her coverture.—Rev., 2099.

2670. Separate savings; husband's liability for use of.—The savings from the income of the separate estate of the wife are her separate property. But no husband who, during the coverture (the wife not being a freetrader under this chapter), has received, without objection from his wife, the income of her separate estate, shall be liable to account for such receipt, for any greater time than the year next preceding the date of a summons issued against him in an action for such income, or next preceding her death.—Rev., 2100.

2671. Liable for ante-nuptial debts.—The liability of a *feme sole* for any debts owing, or contracts made or damages incurred by her before her marriage shall not be impaired or altered by such marriage.—Rev., 2101.

2. Rights and Liabilities of Husbands.

2672. Tenant by the curtesy, when.—Every man who hath married, or shall marry a woman, and by her have issue born alive, shall, after her death intestate as to the lands, tenements and hereditaments hereinafter mentioned, be entitled to an estate as tenant by the curtesy during his life, in all the lands, tenements and hereditaments whereof his said wife was beneficially seized in deed during the coverture, wherein the said issue was capable of inheriting, whether the said seizin was of a legal or of an equitable estate; except that when the wife shall have obtained a divorce *a mensa et thoro*, and shall not be living with her husband at her death, or when the husband shall have abandoned his wife, or shall have maliciously turned her out of doors, and they shall not be living together at her death; or if the husband shall have separated himself from his wife, and be living in adultery at her death, he shall not be tenant by the curtesy of her lands, tenements and hereditaments.—Rev., 2102.

2673. Party to action against wife; may defend.—In all actions brought against a married woman, who is not a free-trader (as herein-after provided for), the summons shall be served upon the husband also, and on motion to the court in which the action is pending, he may be allowed, with her consent, to defend the same in her name and

behalf, but no judgment shall be given against him, upon any liability claimed against her arising before the marriage or upon any contract made by her alone after her marriage.—Rev., 2103.

2674. Discharged from defense, when; pays cost.—Whenever any husband shall be allowed to defend for his wife, he may be ordered to pay the costs for any misconduct, and may be discharged from the conduct of her defense, if it shall appear to the court that his defense is not bona fide in her interest.—Rev., 2104.

2675. Jointly liable for wife's torts.—Every husband living with his wife shall be jointly liable with her for all damages accruing from any tort committed by her and for all costs and fines incurred in any criminal proceeding against her.—Rev., 2105.

2676. Not liable for ante-nuptial debts.—No man by marriage shall incur any liability for any debts owing, or contracts made, or for wrongs done by his wife before the marriage.—Rev., 2106.

3. Contracts Between Husband and Wife.

2677. Void without approval of probating officer.—No contract between a husband and wife made during coverture shall be valid to affect or change any part of the real estate of the wife, or the accruing income thereof, for a longer time than three years next ensuing the making of such contract, or to impair or change the body or capital of the personal estate of the wife, or the accruing income thereof, for a longer time than three years next ensuing the making of such contract, unless such contract shall be in writing, and be duly proved as is required for conveyances of land; and upon the examination of the wife separate and apart from her husband, as is now or may hereafter be required by law in the probate of deeds of *femes covert*, it shall appear to the satisfaction of such officer that the wife freely executed such contract, and freely consented thereto at the time of her separate examination, and that the same is not unreasonable or injurious to her. The certificate of the officer shall state his conclusions, and shall be conclusive of the facts therein stated. But the same may be impeached for fraud as other judgments may be.—Rev., 2107.

2678. When valid.—Contracts between husband and wife not forbidden by the preceding section and not inconsistent with public policy are valid, and any persons of full age about to be married, and subject to the preceding section, any married persons may release and quit-claim dower, tenancy by the curtesy, and all other rights which they might respectively acquire or may have acquired by marriage in the property of each other; and such releases may be pleaded in bar of any action or proceeding for the recovery of the rights and estates so released.—Rev., 2108.

Money "advanced and lent" to the husband by the wife during coverture, since the constitution of 1868, is valid and not inconsistent with the acts of 1871-'72, c. 193.—*George v. High*, 85—99.

4. Divorce and Separation.

2679. Property rights after divorce a vinculo.—When a marriage shall be dissolved a vinculo, the parties respectively, or when either party shall be convicted of the felonious slaying of the other or of being accessory before the fact of such felonious slaying the party so convicted shall thereby lose all his or her right to an estate by the curtesy, or dower, and all right to any year's provision or distributive share in the personal property of the other, and all right to administer on the estate of the other, and every right and estate in the real or personal estate of the other party, which by settlement before or after marriage was settled upon such party in consideration of the marriage only.—Rev., 2109.

Note.—See also s. 7 of Revisal.

2680. Effects of elopement.—If any married woman shall elope with an adulterer, or shall wilfully and without just cause abandon her husband and refuse to live with him, and shall not be living with her husband at his death, or if a divorce from bed and board be granted on the application of the husband, she shall thereby lose all right to dower in the lands and tenements of her husband, and also all right to a year's provision, and to a distributive share from the personal property of her husband, and all right to administration on his estate, and also all right and estate in the property of her husband, settled upon her upon the sole consideration of the marriage, before or after marriage; and such elopement may be pleaded in bar of any action, or proceeding, for the recovery of such rights and estates; and in case of such elopement, abandonment, or divorce, the husband may sell and convey his real estate as if he were unmarried, and the wife shall thereafter be barred of all claim and right of dower therein.—Rev., 2110.

2681. Effect of husband living in adultery.—If any husband shall separate from his wife and live in adultery, or shall wilfully and without just cause abandon his wife and refuse to live with her, and such conduct on his part is not condoned by her, or if a divorce from bed and board be granted on the application of the wife, he shall thereby lose all right to curtesy in the real property of the wife, and also all right and estate of whatever character in and to her personal property, as administrator, or otherwise; and also any right and estate in the property of the wife which may have been settled upon him solely in consideration of the marriage by any settlement before or after marriage, and in case of such adultery and abandonment or divorce, the wife may sell and convey her real property as if she were unmarried, and the husband, if there has been no condonation at the time of the conveyance, shall thereafter be barred of all claim and right to curtesy in such real property.—Rev., 2111.

Note.—See Divorce and Alimony.

5. Free-traders.

2682. How created.—Every married woman of the age of twenty-one years or upwards, with the consent of her husband, may become a free-trader in the manner following:

(1) By ante-nuptial contract, proved and registered, as hereinafter required; or,

(2) By her and her husband signing a writing in the following or some equivalent form:

A. B., of the age of twenty-one years or upwards, wife of C. D., of county, with his consent, testified by the signature hereto, enters herself as a free trader from the date of the registration hereof.

(Signed)

A. B.

C. D.

Witness: E. F.

Registered thisday of, 19....

The said writing may be proved by the subscribing witness or acknowledged by the parties before any officer authorized to take the probate of deeds, and shall be filed and registered in the office of the register of deeds for the county in which the woman proposes to have her principal or only place of business.—Rev., 2112.

2683. Dates from registration.—From the time of the registration of the writing mentioned in the preceding section, the married woman therein mentioned shall be a free trader, and authorized to contract and deal as if she were a feme sole.—Rev., 2113.

2684. Certified copy evidence.—A copy of such writing, duly proved and registered and certified by the register of the county in which

the same is registered, shall be admissible in evidence as certified copies of registered deeds are, or may be allowed to be.—Rev., 2114.

2685. How ended; publication.—The right of a married woman to act as a free trader may be ended at any time by an entry by her, or by her attorney, in the margin of the registration of the writing above mentioned, to the effect that from the date of such marginal entry, she ceases so to act; and by publication to that effect weekly for three weeks in some newspaper published in the county in which she had her principal or only place of business, or if there shall be none so published, then in any other convenient newspaper. But such entry and publication shall not impair any liabilities incurred previously thereto, nor prevent such married woman from becoming liable afterwards to any person whom she may fraudulently induce to deal with her as a free trader.—Rev., 2115.

2686. Living separate from husband; husband idiot or lunatic.—Every woman who shall be living separate from her husband, either under a judgment of divorce by a competent court, or under a deed of separation, executed by said husband and wife, and registered in the county in which she resides, or whose husband shall have been declared an idiot or a lunatic, shall be deemed and held, from the docketing of such judgment, or from the registration of such deed, or from the date of such idiocy or lunacy and during its continuance, a free trader, and shall have power to convey her personal estate and her real estate without the assent of her husband.—Rev., 2116.

2687. Abandoned by husband.—Every woman whose husband shall abandon her, or shall maliciously turn her out of doors, shall be deemed a free trader, so far as to be competent to contract and be contracted with, and to bind her separate property, but the liability of her husband for her reasonable support shall not thereby be impaired, and she shall have power to convey her personal estate and her real estate without the assent of her husband.—Rev., 2117.

2688. Persons trading without disclosing interest; married woman declared free trader; burden of proof.—If any person or persons shall transact business as trader or merchant, with the addition of the words "factor," "agent," "and company" or "and Co.," or shall conduct such business under any name or style other than his own, except in case of corporation, and fail to disclose the name of his principal or partner by a sign placed conspicuously at the place wherein such business is conducted; or if any married woman shall conduct such business through her husband or any other agent, or if any husband or agent of any married woman shall conduct such business for her without displaying the Christian name of such married woman, and the fact that she is a feme covert, by a sign placed conspicuously at the place wherein such business is conducted, then all the property, stock of goods and merchandise, and choses in action purchased, used and contracted in the course of such business shall, as to creditors, be liable for the debts contracted in the course of such business by the person in charge of same. Any married woman conducting such business as aforesaid without complying with the provisions of this section shall for all purposes be deemed and treated, as to all debts contracted in the course of such business, as a free trader as fully as if she had in all respects complied with the provisions of this subchapter: Provided, this section shall not apply to any person transacting business under license as an auctioneer, broker or commission merchant. In all actions under this section it shall be incumbent on such trader, merchant or married woman to prove compliance with the same.—Rev., 2118.

CHAPTER XLVII.

MILLS.

1. Public.

2689. What are.—Every water grist-mill, steam mill, or wind-mill, that shall grind for toll, shall be a public mill.—Rev., 2119.

2690. Grind according to turn; toll taken.—All millers of public mills shall grind according to turn, and shall well and sufficiently grind the grain brought to their mills, if the water will permit, and shall take no more toll for grinding than one-eighth part of the indian corn or wheat, and one-fourteenth part for chopping grain of any kind; and every miller and keeper of a mill making default therein shall, for each offense, forfeit and pay five dollars to the party injured: Provided, that the owner may grind his own grain at any time.—Rev., 2120.—Laws 1907, c. 367.

2691. Measures kept, toll by weight.—All millers shall keep in their mills the following measures, namely, a half-bushel and peck of full measure, and also proper toll-dishes for each measure; but the toll allowed by law may be take by weight or measure at the option of the miller and customer.—Rev., 2121.

2. Water Mills Established.

2692. Procedure.—Any person wishing to build a water mill, who hath land on only one side of a stream, shall issue a summons returnable to the superior court of the county in which the land sought to be condemned, or some part of it, lies, against the persons in possession and the owners of the land on the opposite side of the stream, and against such others as have an interest in the controversy, and the procedure shall be as is provided in other special proceedings, except so far as the same may be modified by this chapter.—Rev., 2122.

2693. Commissioners appointed, how.—If no just cause should be shown against the building of such mill, the court shall appoint three freeholders, one of whom shall be chosen by the plaintiff, another by the defendants, and the third by the court, or if the plaintiff or defendants shall refuse or fail, or unreasonably delay to name a commissioner, the court shall name one in lieu of such delinquent party. These commissioners may be changed from time to time by permission of the court for just cause shown.—Rev., 2123.

2694. What commissioner presides; penalty for failure to perform duty.—The third commissioner shall cause the others to be notified of the time and place of meeting, and shall preside at their meetings. They may, if necessary, summon and examine witnesses, who shall be sworn by the presiding commissioner; any commissioner named by or for either of the parties, who, without just cause, shall fail to attend any meeting notified by the president, shall forfeit and pay to the opposite party fifty dollars; and if the president shall, in like manner, unreasonably delay to notify the other commissioners of a meeting, or fail to attend one that is appointed, he shall forfeit and pay to the plaintiff fifty dollars, and to the defendant a like sum.—Rev., 2124.

2695. Duty of commissioners.—The commissioners shall be sworn by some officer qualified to administer an oath to act impartially between the parties, and to perform the duties herein imposed on them honestly and to the best of their ability. They shall view the premises where the mill is proposed to be built, and shall lay off and value a portion of the land of the plaintiff, not to exceed one acre in area, and an equal area of the land of the defendants opposite thereto, and

report their proceedings to the court within a reasonable time, not exceeding sixty days.—Rev., 2125.

2696. Report contains what.—The report of the commissioners shall set forth—

1. The location, quantities and value of the several areas laid off by them.
2. Whether either of them includes houses, gardens, orchards or other immediate conveniences.
3. Whether the proposed mill will overflow another mill or create a nuisance in the neighborhood.
4. Any other matter upon which they shall have been directed by the court to report, or which they may think necessary to the doing of full justice between the parties.—Rev., 2126.

2697. When mill not allowed.—If the area laid off on the land of either party take away houses, gardens, orchards, or other immediate conveniences; or if the mill proposed will overflow another mill, or will create a nuisance in the neighborhood, the court shall not allow the proposed mill to be built.—Rev., 2127.

2698. Power of court on return of report.—If the report be in favor of building the proposed mill, and is confirmed, then the court may, in its discretion, allow either the plaintiff or defendant to erect such mill at the place proposed, and shall order the costs, and the value of the opposite area, to be paid by the party to whom such leave shall be granted; and upon such payment, the party to whom such leave shall be granted shall be vested with title in fee to the opposite area. Such payment may be made into court for the use of the parties entitled thereto.—Rev., 2128.

Note.—For costs, see s. 1269 of Revisal.

2699. Built when; kept up.—The person to whom leave shall be granted shall, within one year, begin to build such water mill, and shall finish the same within three years; and thereafter keep it up for the use and ease of such as shall be customers to it; otherwise, the said land shall return to the person from whom it was taken, or to such other person as shall have his right, unless the time for finishing the mill, for reasons approved by the court, be enlarged.—Rev., 2129.

2700. Time in which must be rebuilt.—If any water mill belonging to any person not being of age, a married woman, or of unsound mind, or imprisoned, falls, burns, or is otherwise destroyed, such person and his heirs shall have three years to rebuild and repair the same, and any person under any disability aforesaid shall have three years from the removal of the disability.—Rev. 2130.

III. Dams; Backing and Conveying Water.

2701. Procedure.—Any person who has land on one or both sides of a stream and wishes to build a water mill or has a water mill already built and may find it necessary for the better operation of said mill or the building of the said mill to convey water either to or from his mill by ditch, water-way, drain, mill-race or tail-race, or in any other manner, over the lands of any other person, or erect a dam to pond said water over the lands of any other person, or raise any dam already built, may make application by petition in writing to the clerk of the superior court of the county in which the said lands be affected, or a greater part thereof, are situated, for the right to so convey the said water or pond the same by the erection of a dam or the raising of any dam already built; and the procedure shall be as in other special proceedings.—Rev., 2131.

2702. Petition to contain, what.—The petition shall specify the lands to be affected, the name of the owner of said lands and the character of the ditch, race, waterway or drain or pond intended to be made, and said owner or owners shall be made parties defendant. The petition shall state the distance desired to be condemned on each side of the ditch, water-way or drain to be constructed or erected, and not more than thirty feet from each bank can be condemned.—Rev., 2132.

2703. Commissioners appointed.—Upon the hearing of the petition, if the prayer thereof be granted, the clerk shall appoint three disinterested persons qualified to act as jurors, and not connected either by blood or marriage with the parties, appraisers to assess the damage, if any, that will accrue to the said lands by the contemplated work, and shall issue a notice to them to meet upon the premises on a day specified, not to exceed ten days from the date of said notice.—Rev., 2133.

2704. Commissioners; oath and duty.—The appraisers having met, shall take an oath before some officer qualified to administer oaths to faithfully perform their duty and to do impartial justice in the case, and shall then examine all the lands in any way to be affected by the said work and assess the damage thereto and make report thereof under their hands and seals to the clerk from whom the notice issued, who shall have power to confirm the same.—Rev., 2134.

2705. Damages assessed.—In determining the amount of such compensation to be paid to the owners of the said lands and assessing the damages thereto by reason of the erection or construction of such water-way, ditch, drain or dam they shall make an allowance or deduction on account of any benefits which the parties in interest may derive from the construction or erection of such water-way, ditch, drain or dam, and shall ascertain the damages, as near as may be, to the extent it may damage each acre of land so appropriated or occupied by the said mill-owner. The damages assessed by the appraisers under this subchapter shall include all damages that the owners shall thereafter suffer or be entitled to by reason of the construction of the said water-ways, races, ditches or dams.—Rev., 2135.

2706. When mill not allowed.—If the area laid off on the lands of either party take away houses, gardens, orchards or immediate conveniences, or if the mill proposed or erected will overflow another mill or pond water within two hundred feet of another mill or will overflow or pond water within two hundred feet of the mill-site or premises of a person who has the right to rebuild a mill under section two thousand one hundred and thirty or by the authority of law, or the mill create a nuisance in the neighborhood, the court shall not allow the report of the appraisers to be affirmed.—Rev., 2136.

2707. Rights of petitioner.—After the return of the appraisers and the confirmation thereof, the petitioner shall have full right and power to enter upon said lands and make such ditches, water-ways, drains, races or other necessary works and construct such dams: Provided, he has first paid or tendered the damage assessed as above to the owner of such lands or his known or recognized agent in this state. If the owner be a nonresident and have no known agent in this state the amount so assessed shall be paid by the petitioner into the office of the clerk of the superior court of the county for the use of such owner: Provided further, that the mill-owner shall not be compelled to pay said damages so assessed unless he shall enter upon such lands and make ditches, drains or other works or erect such dam.—Rev., 2137.

2708. Mills not erected when; abatement of nuisance.—No other person shall have the right to erect or maintain any dam, ditch, waterway, drain or race that will overflow or pond water within two hundred feet of the mill-site or premises of any person or body corporate who shall have erected a mill, dam, ditch, drain or race under the provisions of this chapter, or of any mill-site owned by any person who may have the right to rebuild a mill under section two thousand one hundred and thirty, or by the authority of law, and when any person shall violate the provisions of this section the owner of said mill or mill-site shall have a right of action against said person to tear down said dam or other works so built or erected to the extent herein forbidden and to abate the same as prescribed by law for the abatement of nuisances.—Rev., 2138.

2709. Report registered.—The petitioner, or any other person interested, may have the said assessment registered upon the certificate of the clerk and shall pay the register the usual legal fees for registering such instruments in his office.—Rev., 2139.

2710. Fees of appraisers.—Each appraiser shall be entitled to a fee of one dollar for each day actually employed in making said assessment, to be paid by the petitioner.—Rev., 2140.

4. Damages.

2711. For erection of mills; procedure.—Any person conceiving himself injured by the erection of any gristmill, or mill for other useful purposes, may issue his summons returnable before the judge of the superior court of the county where the endamaged land, or any part thereof lies, against the persons authorized to be made parties defendant. In his complaint he shall set forth in what respect and to what extent he is injured, together with such other matters as may be necessary to entitle him to the relief demanded. The court shall then proceed to hear and determine all the questions of law and issues of fact arising on the pleadings as in other civil actions.—Rev., 2141.

2712. Dams, when abated as nuisances.—When damages shall be recovered in final judgment in such civil actions and execution shall issue and be returned unsatisfied, and the plaintiff is not able to collect the same either from the insolvency of the defendant or by reason of the exemptions allowed to defendant, the judge shall, on the facts being made to appear before him by affidavit or other evidence, order that the dam, or portion of the dam, or other cause creating the injury, shall be abated as a nuisance, and he shall have power to make all necessary orders to effect this purpose.—Rev., 2142.

2713. Judgment binding five years, when.—A judgment giving to the plaintiff an annual sum by way of damages shall be binding between the parties for five years from the issuing of the summons, if the mill is kept up during that time, unless the damages shall be increased by raising the water or otherwise.—Rev., 2143.

2714. Judgment binding one year, when.—In all cases where the final judgment of the court shall assess the yearly damage of the plaintiff as high as twenty dollars; nothing in this chapter contained shall be construed to prevent the plaintiff, his heirs or assigns, from suing as heretofore, and in such case, the final judgment aforesaid shall be binding only for the year's damage preceding the issuing of the summons.—Rev., 2144.

2715. Judgment against plaintiff; costs, how paid.—If the final judgment of the court shall be that the plaintiff hath sustained no damage, he shall pay the costs of his proceeding; but if the final judgment shall be in favor of the plaintiff, he shall have execution against the defendant for one year's damage, preceding the issuing of the summons,

and for all costs: Provided, that if the damage adjudged do not amount to five dollars, the plaintiff shall recover no more costs than damages. And if the defendant do not annually pay the plaintiff, his heirs or assigns, before it falls due, the sum adjudged as the damages for that year, the plaintiff may sue out execution for the amount of the last year's damage, or any part thereof which may remain unpaid.—Rev., 2145.

CHAPTER XLVIII.

NAMES OF PERSONS.

2716. Can not be altered by legislature.—The general assembly shall not have power to pass any private law to alter the name of any person, * * * but shall have power to pass general laws regulating the same.—Rev., 2146.

2717. Application to alter before clerk superior court; notice.—Any person wishing, for good cause shown, to change his name, shall file his application before the clerk of the superior court of the county in which he may live, first having given ten days' notice of said application by publication at the courthouse door, and in said application shall state the true name of the applicant, the name desired to be adopted, the reasons why said change is desired, and that his name has never been changed before by law. No person shall be allowed to change his name under this chapter but once.—Rev., 2147.

2718. Proof of good character filed.—Said applicant shall also file with said petition proof of his good character, which proof must be made by at least two citizens of said county who know the standing of said applicant.—Rev., 2148.

2719. Change ordered by clerk.—Upon said application being made upon the verified petition of the applicant and the proof of good character, it shall be the duty of the clerk of the superior court, if he thinks good and sufficient reason exists for the change of name, to issue an order changing the name of the applicant from his true name to the name sought to be adopted, and when said order is made and the applicant's name changed said applicant shall be entitled to all the privileges and protection under said new name as he would have been under the old name.—Rev., 2149.

2720. Clerk to issue certificate; record made.—The clerk shall issue to the applicant a certificate under his hand and seal of office, stating the change made in said applicant's name, and shall also record said application and order on the docket of special proceedings in his court.—Rev., 2150.

CHAPTER XLIX .

NEGOTIABLE INSTRUMENTS.

1. Requirements for Negotiability.

2721. What to contain.—An instrument to be negotiable must conform to the following requirements: (1) It must be in writing and signed by the maker or drawer; (2) must contain an unconditional promise or order to pay a sum certain in money; (3) must be payable on demand or at a fixed or determinable future time; (4) must be payable to the order of a specified person or to bearer; and (5) where the instrument is addressed to a drawee, he must be named, or otherwise indicated therein with reasonable certainty.—Rev., 2151.

2722. What constitutes a sum certain.—The sum payable is a sum certain within the meaning of this chapter, although it is to be paid (1) with interest; or (2) by stated installments; or (3) by stated installments with a provision that upon default in payment of any installment the whole shall become due; or (4) with exchange, whether at a fixed rate or at the current rate; or (5) with costs of collection or an attorney's fee in case payment shall not be made at maturity.—Rev., 2152.

2723. What promise unconditional.—An unqualified order or promise to pay is unconditional within the meaning of this chapter, though coupled with (1) an indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or (2) a statement of the transaction which gives rise to the instrument. But an order or promise to pay out of a particular fund is not unconditional.—Rev., 2153.

2724. Additional promise makes non-negotiable; exceptions.—An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which (1) authorizes the sale of collateral securities in case the instrument be not paid at maturity; or (2) authorizes a confession of judgment if the instrument be not paid at maturity; or (3) waives the benefit of any law intended for the advantage or protection of obligor; or (4) gives the holder an election to require something to be done in lieu of payment of money. But nothing in this section shall validate any provision or stipulation otherwise illegal.—Rev., 2154.

2725. Things which do not affect.—The validity and negotiable character of an instrument are not affected by the fact that (1) it is not dated; or (2) does not specify the value given, or that any value has been given therefor; or (3) does not specify the place where it is drawn or the place where it is payable; or (4) bears a seal; or (5) designates a particular kind of current money in which payment is to be made. But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.—Rev., 2155.

2726. What is a determinable future time.—An instrument is payable at a determinable future time, within the meaning of this chapter, which is expressed to be payable (1) at a fixed period after date or sight; or (2) on or before a fixed or determinable future time specified therein; or (3) on or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening be uncertain. An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect.—Rev., 2156.

2727. When payable on demand.—An instrument is payable on demand (1) when it is expressed to be payable on demand, or at sight or on presentation; or (2) in which no time for payment is expressed. Where an instrument is issued, accepted or indorsed when overdue, it is, as regards the person so issuing, accepting or indorsing it, payable on demand.—Rev., 2157.

2728. What are payable to order.—The instrument is payable to order when it is drawn payable to the order of a specified person, or to him or his order. It may be drawn payable to the order of (1) a payee who is not maker, drawer or drawee; or (2) the drawer or maker; or (3) the drawee; or (4) two or more payees jointly; or (5) one or some of several payees, or (6) the holder of an office for the time being. When the instrument is payable to order, the payee must be

named or otherwise indicated therein with reasonable certainty.—Rev., 2158.

2729. What are payable to bearer.—The instrument is payable to bearer (1) when it is expressed to be so payable; or (2) when it is payable to a person named therein or to bearer; or (3) when it is payable to the order of a fictitious or nonexistent person, and such fact was known to the person making it so payable; or (4) when the name of the payee does not purport to be the name of any person; or (5) when the only or last indorsement is an indorsement in blank.—Rev., 2159.

2730. No formal language required.—The negotiable instrument need not follow the language of this chapter, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof.—Rev., 2160.

2. Date.

2731. Prima facie true.—Where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed prima facie to be the true date of the making, drawing, acceptance or indorsement, as the case may be.—Rev., 2161.

2732. Incorrect, does not invalidate.—The instrument is not invalid for the reason only that it is antedated or post-dated, provided that this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery.—Rev., 2162.

2733. Holder may insert.—When an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him the date so inserted is to be regarded as the true date.—Rev., 2163.

3. Incomplete.

2734. Blanks may be filled by holder.—Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument after completion be negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.—Rev., 2164.

2735. Not valid unless delivered.—Where an incomplete instrument has not been delivered it will not, if completed and negotiated without authority, be a valid contract in the hands of any holder as against any person whose signature was placed thereon before delivery.—Rev., 2165.

2736. Revocable until delivery.—Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate par-

ties, and as regards a remote party other than a holder in due course, the delivery in order to be effectual must be made either by or under the authority of the party making, drawing or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course a valid delivery thereof by all parties prior to him, so as to make them liable to him, is conclusively presumed. And where the instrument is no longer in possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.—Rev., 2166.

4. Signature.

2737. No liability without.—No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name.—Rev., 2167.

2738. May be made by agent.—The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose, and the authority of the agent may be established as in other cases of agency.—Rev., 2168.

2739. Effect of signing as agent.—Where the instrument contains, or a person adds to his signature, words indicating that he signed for or on behalf of the principal or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent or as filling a representative character, without disclosing his principal, does not exempt him from personal liability.—Rev., 2169.

2740. Effect of, by procuration.—A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent so signing acted within the actual limits of his authority.—Rev., 2170.

2741. Forgery of, renders wholly inoperative.—When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative and no right to retain the instrument or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority.—Rev., 2171.

5. Consideration.

2742. Valuable, presumed.—Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration, and every person whose signature appears thereon to have become a party thereto for value.—Rev., 2172.

2743. What constitute value.—Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value and is deemed such whether the instrument is payable on demand or at a future time.—Rev., 2173.

2744. Holder deemed holder for value when value given.—Where value has at any time been given for the instrument the holder is deemed a holder for value in respect to all parties who became such prior to that time.—Rev., 2174.

2745. Holder of lien, holder for value to extent of lien.—Where the holder has a lien on the instrument arising either from contract or by implication of law he is deemed a holder for value to the extent of his lien.—Rev., 2175.

2746. Absence or failure of, as defense.—Absence or failure of consideration is matter of defense as against any person not a holder in due course, and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise.—Rev., 2176.

2747. Accommodation party, who is; liability.—An accommodation party is one who has signed the instrument as maker, drawer, acceptor or indorser without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.—Rev., 2177.

6. Endorsement.

2748. What is negotiation.—An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order, it is negotiated by the indorsement of the holder, and completed by delivery.—Rev., 2178.

2749. How made.—The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement.—Rev., 2179.

2750. Effect of, by corporations and infants.—The indorsement or assignment of the instrument by a corporation, an infant, or married woman passes the property therein, notwithstanding that from want of capacity the corporation, infant, or married woman may incur no liability thereon.—Rev., 2180.

2751. Must be of entire instrument.—An indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable or which purports to transfer the instrument to two or more indorsers severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part it may be indorsed as to the residue.—Rev., 2181.

2752. Kinds of.—An indorsement may be either in blank or special, and it may also be either restrictive or qualified or conditional.—Rev., 2182.

2753. Special, defined; in blank.—A special indorsement specifies the person to whom or to whose order the instrument is to be payable; and the endorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer and may be negotiated by delivery.—Rev., 2183.

2754. Holder may convert blank to special.—The holder may convert a blank endorsement into a special indorsement by writing over the signature of the endorser in blank any contract consistent with the character of the indorsement.—Rev., 2184.

2755. Restrictive, defined.—An indorsement is restrictive, which either (1) prohibits the further negotiation of the instrument; or (2) constitutes the indorsee the agent of the indorser; or (3) vests the title in the indorsee in trust for or to the use of some other person. But the mere absence of words implying power to negotiate does not make an indorsement restrictive.—Rev., 2185.

2756. Restrictive, confers what rights.—A restrictive indorsement confers upon the indorsee the right (1) to receive payment of the instrument; (2) to bring any action thereon that the indorser could

bring; (3) to transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so. But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.—Rev., 2186.

2757. Qualified, constitutes indorser a mere assignor of title.—A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.—Rev., 2187.

2758. Conditional, effect of.—Where an indorsement is conditional, a party required to pay the instrument may disregard the condition and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated will hold the same or the proceeds thereof subject to the rights of the person indorsing conditionally.—Rev., 2188.

2759. Effect of special, instrument payable to bearer.—Where an instrument payable to bearer is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.—Rev., 2189.

2760. By two or more payees.—Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse unless the one indorsing has authority to indorse for the others.—Rev., 2190.

2761. Payable to cashier or other fiscal officer, payable to corporation.—Where an instrument is drawn or indorsed to a person as cashier or other fiscal officer of a bank or corporation it is deemed prima facie to be payable to the bank or corporation of which he is such officer, and may be negotiated by either the indorsement of the bank or corporation or the indorsement of the officer.—Rev., 2191.

2762. Name of payee wrong, how indorsed.—Where the name of a payee or indorsee is wrongly designated or misspelled he may indorse the instrument as there described, adding, if he think fit, his proper signature.—Rev., 2192.

2763. Indorser in representative capacity may negative personal liability.—Where any person is under obligation to indorse in a representative capacity he may indorse in such terms as to negative personal liability.—Rev., 2193.

2764. Undated, presumed, before due.—Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue.—Rev., 2194.

2765. Presumed made at place of date of instrument.—Except where the contrary appears, every indorsement is presumed prima facie to have been made at the place where the instrument is dated.—Rev., 2195.

2766. Once negotiable, continues so till discharged.—An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.—Rev., 2196.

2767. Holder may strike out; effect of.—The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out and all indorsers subsequent to him are thereby relieved from liability on the instrument.—Rev., 2197.

2768. Transfer without, makes non-negotiable till indorsed.—Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferrer had therein, and the transferee acquires in addition the right to have the indorsement of the transferrer. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.—Rev., 2198.

2769. Negotiation back to prior party releases intermediate party.—Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this chapter, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.—Rev., 2199.

7. Rights of Holder.

2770. May sue in his own name.—The holder of a negotiable instrument may sue thereon in his own name, and payment to him in due course discharges the instrument.—Rev., 2200.

2771. What constitutes holder in due course.—A holder in due course is a holder who has taken the instrument under the following conditions: (1) That the instrument is complete and regular upon its face; (2) That he became the holder of it before it was overdue and without notice that it has been previously dishonored, if such was the fact; (3) that he took it for good faith and value; (4) that at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.—Rev., 2201.

2772. Delay in presenting when on demand.—Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course.—Rev., 2202.

2773. Effect of notice of infirmity.—Where the transferee received notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him.—Rev., 2203.

2774. Fraud, duress or force in obtaining, makes title void.—The title of a person who negotiates an instrument is defective within the meaning of this chapter when he obtained the instrument, or any signature thereto, by fraud, duress or force and fear or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith or under such circumstances as amount to a fraud.—Rev., 2204.

2775. Actual knowledge necessary to constitute notice of infirmity.—To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same the person to whom it is negotiated must have had actual knowledge of the infirmity or defect or knowledge of such facts that his action in taking the instrument amounted to bad faith.—Rev., 2205.

2776. Free from defect, in title of prior parties.—A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.—Rev., 2206.

2777. Holds as non-negotiable, when.—In the hands of any holder other than a holder in due course a negotiable instrument is subject to the same defenses as if it were non-negotiable. But a holder who derives his title through a holder in due course and who is not himself a party to any fraud or illegality affecting the instrument has all the rights of such former holder in respect of all parties prior to the latter.—Rev., 2207.

2778. Deemed prima facie in due course.—Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course. But the last-mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title.—Rev., 2208.

8. Liability of Parties.

2779. Maker's admissions and engagements.—The maker of a negotiable instrument by making it engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse.—Rev., 2209.

2780. Drawer's admissions and engagements.—The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse, and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder.—Rev., 2210.

2781. Acceptor's engagements.—The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits (1) existence of the drawer, the genuineness of his signature and his capacity and authority to draw the instrument; and (2) the existence of the payee and his then capacity to indorse.—Rev., 2211.

2782. Who deemed indorsers.—A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor, is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity.—Rev., 2212.

2783. Signing in blank, liable as indorser.—Where a person not otherwise a party to an instrument places thereon his signature in blank before delivery he is liable as indorser in accordance with the following rules: (1) If the instrument is payable to the order of a third person he is liable to the payee and to all subsequent parties; (2) if the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer; (3) if he signs for the accommodation of the payee he is liable to all parties subsequent to the payee.—Rev., 2213.

2784. Delivery or qualified indorsement warrants what.—Every person negotiating an instrument by delivery or by a qualified indorsement warrants (1) that the instrument is genuine and in all respects what it purports to be; (2) that he has a good title to it; (3) that all prior parties had capacity to contract; (4) that he has no knowledge of any fact which would impair the validity of the instrument or render it valueless. But when the negotiation is by delivery only the warranty extends in favor of no holder other than the immediate transferee. The provisions of subdivision three of this section do not apply to persons negotiating public or corporate securities other than bills and notes.—Rev., 2214.

2785. Indorser without qualification warrants what.—Every indorser who indorses without qualification warrants to all subsequent holders in due course (1) the matters and things mentioned in subdivisions one, two and three of the next preceding section; and (2) that the instrument is at the time of his indorsement valid and subsisting. And in addition he engages that on due presentment it shall be accepted or

paid, or both, as the case may be. according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken he will pay the amount thereof to the holder or to any subsequent indorser who may be compelled to pay it.—Rev., 2215.

2786. Indorser of instrument negotiable by delivery.—Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser.—Rev., 2216.

2787. In order of their indorsement.—As respects one another, indorsers are liable prima facie in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsers who indorse are deemed to indorse jointly and severally.—Rev., 2217.

2788. Broker or agent negotiating without indorsement.—Where a broker or other agent negotiates an instrument without indorsement he incurs all the liabilities prescribed by section two thousand two hundred and fourteen, unless he discloses the name of his principal and the fact that he is acting only as agent.—Rev., 2218.

9. Presentment for Payment.

2789. When necessary; when not.—Presentment for payment is not necessary in order to charge the person primarily on the instrument; but if the instrument is by its terms payable at a special place, and he is able and willing to pay it at maturity, such ability and willingness are equivalent to a tender of payment on his part. But, except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.—Rev., 2219.

2790. At what time.—Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.—Rev., 2220.

2791. How made.—Presentment for payment to be sufficient must be made (1) by the holder or some person authorized to receive payment on his behalf; (2) at a reasonable hour on a business day; (3) at a proper place as herein defined; (4) to the person primarily liable on the instrument, or, if he is absent or inaccessible, to any person found at the place where the presentment is made.—Rev., 2221.

2792. Proper place for.—Presentment for payment is made at the proper place (1) where a place of payment is specified in the instrument and it is there presented; (2) where no place of payment is specified but the address of the person to make the payment is given in the instrument, and is there presented; (3) where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment; (4) in any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.—Rev., 2222.

2793. Instrument exhibited to party, delivered when paid.—The instrument must be exhibited to the person from whom payment is demanded, and, when it is paid, must be delivered up to the party paying it.—Rev., 2223.

2794. Payable at bank, how made.—Where the instrument is payable at a bank presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.—Rev., 2224.

2795. When made to personal representative.—Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative, if such there be, and if with the exercise of reasonable diligence he can be found.—Rev., 2225.

2796. How made to partners.—Where the persons primarily liable on the instrument are liable as partners and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.—Rev., 2226.

2797. To persons severally liable.—Where there are several persons not parties primarily liable on the instrument and no place of payment is specified, presentment must be made to them all.—Rev., 2227.

2798. When not required to charge drawer.—Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument.—Rev., 2228.

2799. Not required to charge indorser, when.—Presentment for payment is not required in order to charge the indorser where the instrument was made or accepted for his accommodation, and he has no reason to expect that the instrument will be paid if presented.—Rev., 2229.

2800. Delay in making, when excused.—Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate presentment must be made with reasonable diligence.—Rev., 2230.

2801. Dispensed with, when.—Presentment for payment is dispensed with (1) where after the exercise of reasonable diligence presentment as required by this chapter can not be made; (2) where the drawee is a fictitious person; (3) by waiver of presentment, express or implied.—Rev., 2231.

2802. What constitutes.—The instrument is dishonored by non-payment when (1) it is duly presented for payment and payment is refused or can not be obtained; or (2) presentment is excused and the instrument is overdue and unpaid.—Rev., 2232.

2803. Dishonor gives right of action against those secondarily liable.—Subject to the provisions of this chapter when the instrument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder.—Rev., 2233.

2804. When negotiable instruments payable.—Every negotiable instrument is payable at the time fixed therein without grace (except as allowed by the succeeding section). When the day of maturity falls upon Sunday or a holiday the instrument is payable on the next succeeding business day. Instruments falling due on Saturday, when it is a holiday, are to be presented for payment on the next succeeding business day, except that instruments payable on demand may at the option of the holder be presented for payment before twelve o'clock noon on Saturday, when that entire day is not a holiday.—Rev., 2234; Laws, 1907, c. 897.

2805. Days of grace, what allowed.—All bills of exchange payable within the state, at sight, in which there is an express stipulation to that effect, shall be entitled to days of grace as the same are allowed by the custom of merchants on foreign bills of exchange payable at the expiration of a certain period after date or sight: Provided, that no days of grace shall be allowed on any bill of exchange, promissory note, or draft payable on demand.—Rev., 2235; Laws 1907, c. 861.

2806. Time, how computed.—Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the date of payment.—Rev., 2226.

2807. Instrument payable at bank is an order to bank to pay.—Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.—Rev., 2237.

2808. Payment in due course, what is.—Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective.—Rev., 2238.

10. Notice of Dishonor.

2809. Effect of failure to give.—Except as herein otherwise provided, when a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.—Rev., 2239.

2810. By whom given.—The notice may be given by or on behalf of the holder or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who upon taking it up would have a right of reimbursement from the party to whom notice is given.—Rev., 2240.

2811. May be given by agent.—Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.—Rev., 2241.

2812. Who benefited by holder's notice.—Where notice is given by or on behalf of the holder, it inures to the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.—Rev., 2242.

2813. Given by a party inures to benefit of holder and subsequent parties.—Where notice is given by or on behalf of a party entitled to give notice it inures to the benefit of the holder and all parties subsequent to the party by whom notice is given.—Rev., 2243.

2814. Agent may give to principal or parties.—Where the instrument has been dishonored in the hands of an agent he may either himself give notice to the parties liable thereon or he may give notice to his principal. If he give notice to his principal he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.—Rev., 2244.

2815. Defects of, not to invalidate unless party misled.—A written notice need not be signed and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate unless the party to whom the notice is given is in fact misled thereby.—Rev., 2245.

2816. Terms of, may be oral or written.—The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument and indicate that it has been dishonored by nonacceptance or nonpayment. It may in all cases be given by delivering it personally or through the mails.—Rev., 2246.

2817. May be given to party or agent.—Notice of dishonor may be given either to the party himself or to his agent in that behalf.—Rev., 2247.

2818. When given to personal representative.—When any party is dead and his death is known to the party giving notice, the notice must be given to a personal representative if there be one, and if with reasonable diligence he can be found. If there is no personal representative, notice may be sent to the last residence or last place of business of the deceased.—Rev., 2248.

2819. To partner for firm.—When the parties to be notified are partners, notice to any one partner is notice to the firm even though there has been a dissolution.—Rev., 2249.

2820. Joint parties, each notified.—Notice to joint parties who are not partners must be given to each of them unless one of them has authority to receive such notice for the others.—Rev., 2250.

2821. To trustee in bankruptcy, etc.—Where a party has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of his creditors, notice may be given either to the party himself or to his trustee or assignee.—Rev., 2251.

2822. At what time given.—Notice may be given as soon as the instrument is dishonored, and, unless delay is excused as hereinafter provided, must be given within the times fixed by this chapter.—Rev., 2252.

2823. When given to persons residing in same place.—When the person giving and the person to receive notice reside in same place notice must be given within the following times: (1) If given at the place of business of the person to receive notice it must be given before the close of business hours on the day following; (2) if given at his residence it must be given before the usual hours of rest on the day following; (3) if sent by mail it must be deposited in the postoffice in time to reach him in the usual course on the day following.—Rev., 2253.

2824. When given by mail.—Where the person giving and the person to receive notice reside in different places the notice must be given within the following times: (1) If sent by mail it must be deposited in the postoffice in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter; (2) if given otherwise than through the postoffice, then within the time that notice would have been received in due course of mail if it had been deposited in the postoffice within the time specified in the last subdivision.—Rev., 2254.

2825. Duly mailed, deemed given.—Where notice of dishonor is duly addressed and deposited in the postoffice the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.—Rev., 2255.

2826. When deemed mailed.—Notice is deemed to have been deposited in the postoffice when deposited in any branch postoffice or in any letter-box under the control of the postoffice department.—Rev., 2256.

2827. When given to antecedent parties.—Where a party receives notice of dishonor he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor.—Rev., 2257.

2828. Where to be sent.—Where a party has added an address to his signature, notice of dishonor must be sent to that address, but if he has not given such address, then the notice must be sent as follows: (1) Either to the postoffice nearest to his place of residence or to the postoffice where he is accustomed to receive his letters; or (2) if he lives in one place and have his place of business in another, notice may be sent to either place; or (3) if he be sojourning in another place notice may be sent to the place where he is sojourning. But where the notice is actually received by the party within the time specified in

this chapter it will be sufficient, though not sent in accordance with requirements of this section.—Rev., 2258.

2829. May be waived.—Notice of dishonor may be waived either before the time of giving notice has arrived or after the omission to give due notice, and the waiver may be express or implied.—Rev., 2259.

2830. Waiver embodied in instrument binds all parties.—Where the waiver is embodied in the instrument itself it is binding upon all parties, but where it is written above the signature of an indorser it binds him only.—Rev., 2260.

2831. Unnecessary when protest waived.—A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest but also of a presentment and notice of dishonor.—Rev., 2261.

2832. Dispensed with, when.—Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it can not be given to or does not reach the parties sought to be charged.—Rev., 2262.

2833. Delay in giving, excused, when.—Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence.—Rev., 2263.

2834. Not required, when.—Notice of dishonor is not required to be given to the drawer in either of the following cases: (1) Where the drawer and the drawee are the same person; (2) where the drawee is a fictitious person or a person not having capacity to contract; (3) where the drawer is the person to whom the instrument is presented for payment; (4) where the drawer has no right to expect or require that the drawee or acceptor will dishonor the instrument; (5) where the drawer has countermanded payment.—Rev., 2264.

2835. To indorser, not required, when.—Notice of dishonor is not required to be given to an indorser in either of the following cases: (1) Where the drawee is a fictitious person or a person not having capacity to contract and the indorser was aware of the fact at the time he indorsed the instrument; (2) where the indorser is the person to whom the instrument is presented for payment; (3) where the instrument was made or accepted for his accommodation.—Rev., 2265.

2836. Notice of nonacceptance makes unnecessary.—Where due notice of dishonor by nonacceptance has been given, notice of a subsequent dishonor by nonpayment is not necessary unless in the meantime the instrument has been accepted.—Rev., 2266.

2837. Effect of failure to give notice of nonacceptance.—An omission to give notice of dishonor by nonacceptance does not prejudice the rights of a holder in due course subsequent to the omission.—Rev., 2267.

2838. Protest not required, except of foreign bills of exchange.—Where any negotiable instrument has been dishonored it may be protested for nonacceptance or nonpayment as the case may be, but protest is not required except in the case of foreign bills of exchange.—Rev., 2268.

11. Discharge of.

2839. What constitutes.—A negotiable instrument is discharged (1) by payment in due course by or on behalf of the principal debtor; (2) by payment in due course by the party accommodated, where the instrument is made or accepted for accommodation; (3) by the intentional cancellation thereof by the holder; (4) by any other act

which will discharge a simple contract for the payment of money; (5) when the principal debtor becomes the holder of the instrument at or after maturity in his own right.—Rev., 2269.

2840. When one secondarily liable discharged.—A person secondarily liable on the instrument is discharged (1) by an act which discharges the instrument; (2) by the intentional cancellation of his signature by the holder; (3) by the discharge of a prior party; (4) by a valid tender of payment made by a prior party; (5) by a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved; (6) by any agreement binding upon the holder to extend the time of payment or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable or unless the right of recourse against such party is expressly reserved.—Rev., 2270.

2841. Payment by party secondarily liable is not.—When the instrument is paid by a party secondarily liable thereon it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except (1) where it is payable to the order of the third person and has been paid by the drawer; and (2) where it was made or accepted for accommodation and has been paid by the party accommodated.—Rev., 2271.

2842. Holder may renounce in writing his rights against any party.—The holder may expressly renounce his rights against any party to the instrument before, at or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.—Rev., 2272.

2843. Cancellation by mistake inoperative.—A cancellation made unintentionally or under a mistake or without the authority of the holder is inoperative, but where an instrument or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally or under a mistake or without authority.—Rev., 2273.

2844. Material alteration without assent avoids.—Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided except as against a party who has himself made, authorized or assented to the alteration and subsequent indorsers. But when an instrument has been materially altered and is in the hands of a holder in due course not a party to the alteration he may enforce payment thereof according to its original tenor.—Rev., 2274.

2845. Material alteration defined.—Any alteration which changes (1) the date; (2) the sum payable either for principal or interest; (3) the time or place of payment; (4) the number or the relation of the parties; (5) the medium or currency in which payment is to be made; or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration.—Rev., 2275.

12. Bills, Form and Interpretation.

2846. Bills defined.—A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer.—Rev., 2276.

2847. Not assignment of fund.—A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same.—Rev., 2277.

2848. May be addressed to two or more drawees jointly but not in alternative.—A bill may be addressed to two or more drawees jointly, whether they are partners or not, but not to two or more drawees in the alternative or in succession.—Rev., 2278.

2849. Inland bill defined.—An inland bill of exchange is a bill which is or on its face purports to be both drawn and payable within this state. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill the holder may treat it as an inland bill.—Rev., 2279.

2851. When holder may treat as bill or note.—Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument at his option, either as a bill of exchange or a promissory note.—Rev., 2280.

2851. Referee in case of need.—The drawer of a bill and any endorser may insert thereon the name of a person to whom the holder may resort in case of need: that is to say, in case the bill is dishonored by nonacceptance or nonpayment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not, as he may see fit.—Rev., 2281.

13. Acceptance.

2852. Defined. The acceptance of a bill is the signification by the drawee of his assent to order of the drawer. The acceptance must be in writing and signed by the drawer. It must not express that the drawee will perform his promise by any other means than the payment of money.—ev., 2282.

2853. Must be written on bill.—The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill, and if such request is refused, may treat the bill as dishonored.—Rev., 2283.

2854. Effect of, on paper other than bill.—Where an acceptance is written on paper other than the bill itself it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.—Rev., 2284.

2855. Unconditional promise in writing to accept valid, when.—An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value.—Rev., 2285.

2856. Twenty-four hours allowed drawee to accept.—The drawee is allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill, but the acceptance, if given, dates as of the day of presentation.—Rev., 2286.

2857. Destruction of, or failure to return, bill deemed acceptance.—Where a drawee to whom a bill is delivered for acceptance destroys the same or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or nonaccepted to the holder, he will be deemed to have accepted the same.—Rev., 2287.

2858. May be accepted before signed, when overdue, etc.—A bill may be accepted before it has been signed by the drawer or while otherwise incomplete, or when it is overdue, or after it has been dishonored

by a previous refusal to accept, or by nonpayment. But when a bill payable after sight is dishonored by nonacceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.—Rev., 2288.

2859. General and qualified.—An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.—Rev., 2289.

2860. What is general.—An acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only and not elsewhere.—Rev., 2290.

2861. What is qualified.—An acceptance is qualified which is (1) conditional; that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated; (2) partial; that is to say, an acceptance to pay part only of the amount for which the bill is drawn; (3) local; that is to say, an acceptance to pay only at a particular place; (4) qualified as to time; (5) the acceptance of some one or more of the drawees, but not of all.—Rev., 2291.

2862. Holder may refuse qualified acceptance and treat bill as dishonored.—The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance he may treat the bill as dishonored by nonacceptance. When a qualified acceptance is taken the drawer and endorsers are discharged from liability on the bill unless they have expressly or impliedly authorized the holder to take a qualified acceptance or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance he must, within a reasonable time, express his dissent to the holder or he will be deemed to have assented thereto.—Rev., 2292.

14. Presentment for Acceptance.

2863. Necessary, in what cases.—Presentment for acceptance must be made (1) where the bill is payable after sight, or in any other case where presentment for acceptance is necessary in order to fix the maturity of the instrument; or (2) where the bill expressly stipulates that it shall be presented for acceptance; or (3) where the bill is drawn payable elsewhere than at the residence or place of business of the drawee. In no other case is presentment for acceptance necessary in order to render any party to the bill liable.—Rev., 2293.

2864. Failure to present in reasonable time discharges drawee and indorsers.—Except as herein otherwise provided the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fail to do so the drawee and all indorsers are discharged.—Rev., 2294.

2865. How made.—Presentment for acceptance must be made by or on behalf of the holder, at a reasonable hour on a business day and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and (1) where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only; (2) where the drawee is dead presentment may be made to his personal representative; (3) where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors presentment may be made to him or to his trustee or assignee.—Rev., 2295.

2866. On what day presented.—A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of this chapter. When Saturday is not a holiday presentment for acceptance may be made before twelve o'clock noon on that day—Rev., 2296.

2867. Excused, when; can not be made before due.—Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers.—Rev., 2297.

2868. Excused and bill treated as dishonored.—Presentment for acceptance is excused and a bill may be treated as dishonored by nonacceptance in either of the following cases: (1) Where the drawee is dead or has absconded or is a fictitious person or a person not having capacity to contract by bill; (2) where after the exercise of reasonable diligence presentment can not be made; (3) where, although presentment has been irregular, acceptance has been refused on some ground.—Rev., 2298.

2869. When bill dishonored by nonacceptance.—A bill is dishonored by nonacceptance (1) when it is duly presented for acceptance and such an acceptance as is prescribed in this chapter is refused or can not be obtained; or (2) when a presentment for acceptance is executed and the bill is not accepted.—Rev., 2299.

2870. When bill must be treated as dishonored.—Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by nonacceptance or he loses the right of recourse against the drawer and indorsers.—Rev., 2300.

2871. Bill dishonored by nonacceptance, holder has recourse on drawer and indorsers.—When a bill is dishonored by nonacceptance an immediate right of recourse against the drawer and indorsers accrues to the holder and no presentment for payment is necessary.—Rev., 2301.

15. Protest.

2872. Necessary only on foreign bills.—Where a foreign bill appearing on its face to be such is dishonored by nonacceptance, it must be duly protested for nonacceptance, and where such a bill which had not previously been dishonored by nonacceptance is dishonored by nonpayment it must be duly protested for nonpayment. If it is not so protested the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill protest in case of dishonor is unnecessary.—Rev., 2302.

2873. Annexed to bill, specifies what.—The protest must be annexed to the bill or must contain a copy thereof and must be under the hand and seal of the notary making it, and must specify (1) the time and place of presentment; (2) the fact that presentment was made and the manner thereof; (3) the cause or reason for protesting the bill; (4) the demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.—Rev., 2303.

2874. By whom made.—Protest may be made by (1) a notary public; or (2) by any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.—Rev., 2304.

2875. Must be made on day of dishonor.—When a bill is protested, such protest must be made on the day of its dishonor, unless delay

is excused as herein provided. When a bill has been duly noted the protest may be subsequently extended as of the date of the noting.—Rev., 2305.

2876. At what place made.—A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business or residence of some person other than the drawee has been dishonored by nonacceptance it must be protested for nonpayment at the place where it is expressed to be payable, and no further presentment for payment to or demand on the drawee is necessary.—Rev., 2306.

2877. For nonpayment, after, for nonacceptance.—A bill which has been protested for nonacceptance may be subsequently protested for nonpayment.—Rev., 2307.

2878. Before maturity, in bankruptcy, etc.—Where the acceptor has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.—Rev., 2308.

2879. Dispensed with, when.—Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate the bill must be noted or protested with reasonable diligence.—Rev., 2309.

2880. On a copy of lost bill.—Where a bill is lost or destroyed or is wrongfully detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.—Rev., 2310.

16. Acceptance for Honor.

2881. When may be made.—Where a bill of exchange has been protested for dishonor by nonacceptance or protested for better security, and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill *supra* protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be part only of the sum for which the bill is drawn, and where there has been an acceptance for honor for one party there may be a further acceptance by a different person for the honor of another party.—Rev., 2311.

2882. How made.—An acceptance for honor *supra* protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.—Rev., 2312.

2883. Deemed for honor of drawer.—Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.—Rev., 2313.

2884. Liability on.—The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.—Rev., 2314.

2885. Liable, when.—The acceptor for honor by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee; and provided also, that it shall have been duly presented for payment and protested for nonpayment and notice of dishonor given to him.—Rev., 2315.

2886. Maturity, how calculated.—Where a bill payable after sight is accepted for honor its maturity is calculated from the date of the

noting for nonacceptance and not from the date of the acceptance for honor.—Rev., 2316.

2887. Protest before presentment to acceptor.—Where a dishonored bill has been accepted for honor supra protest or contains a reference in case of need, it must be protested for nonpayment before it is presented for payment to the acceptor for honor or referee in case of need.—Rev., 2317.

2888. How presented for payment.—Presentment for payment to the acceptor for honor must be made as follows: (1) If it is to be presented in the place where the protest for nonpayment was made it must be presented not later than the day following its maturity; (2) if it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time in this chapter specified.—Rev., 2318.

2889. Delay in presenting to acceptor for honor or referee in case of need excused, when.—The provisions of section two thousand two hundred and thirty apply where there is delay in making presentment to the acceptor for honor or referee in case of need.—Rev., 2319.

2890. Protest when not paid by acceptor.—When the bill is dishonored by the acceptor for honor it must be protested for nonpayment by him.—Rev., 2320.

17. Payment for Honor.

2891. After protest.—Where a bill has been protested for nonpayment any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.—Rev., 2321.

2892. Must be attested by notarial act of honor.—The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor, which may be appended to the protest or form an extension to it.—Rev., 2322.

2893. Notarial act of honor, on what founded.—The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays.—Rev., 2323.

2894. Who given preference in.—Where two or more persons offer to pay a bill for the honor of different parties the person whose payment will discharge most parties to the bill is to be given the preference.—Rev., 2324.

2895. Discharges all subsequent parties.—Where a bill has been paid for honor all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for and succeeds to both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.—Rev., 2325.

2896. Refusing payment forfeits rights.—Where the holder of a bill refuses to receive payment supra protest he loses his right of recourse against any party who would have been discharged by such payment.—Rev., 2326.

2897. Payer for honor entitled to bill and protest.—The payer for honor on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor is entitled to receive both the bill itself and the protest.—Rev., 2327.

18. Bills in a Set.

2898. Constitute one bill.—Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitute one bill.—Rev., 2328.

2899. Two or more parts negotiated, holder whose title first accrues owner.—Where two or more parts of a set are negotiated to different holders in due course the holder whose title first accrues is, as between such holders, the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him.—Rev., 2329.

2900. Indorser liable for all he indorses.—Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if such parts were separate bills.—Rev., 2330.

2901. Acceptor liable for all he accepts.—The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part and such accepted parts are negotiated to different holders in due course he is liable on every such part as if it were a separate bill.—Rev., 2331.

2902. Payment of part does not release from outstanding accepted part.—When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.—Rev., 2332.

2903. Payment of one part discharges whole, when.—Except as herein otherwise provided where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged.—Rev., 2333.

2904. Negotiable promissory note defined.—A negotiable promissory note within the meaning of this chapter is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order it is not complete until indorsed by him.—Rev., 2334.

2905. Check defined, law governing.—A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided the provisions of this chapter are applicable to a bill of exchange payable on demand apply to a check.—Rev., 2335.

2906. Failure to present in reasonable time discharges drawer. A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.—Rev., 2336.

2907. Certification of check an acceptance.—Where a check is certified by the bank on which it is drawn the certification is equivalent to an acceptance.—Rev., 2337.

2908. Certification discharges drawer and indorsers.—Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon.—Rev., 2338.

2909. Check not assignment of funds.—A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder unless and until it accepts or certifies the check.—Rev., 2339.

20. General Provisions.

2910. Terms defined.—In this chapter, unless the context otherwise requires—

“Acceptance” means an acceptance completed by delivery or notification.

“Action” includes counterclaim and setoff.

"Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

"Bill" means bill of exchange, and "note" means negotiable promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another.

"Holder" means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Instrument" means negotiable instrument.

"Issue" means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

"Person" includes a body of persons, whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed, and "writing" includes print.—Rev., 2340.

2911. Rules of construction.—Where the language of the instrument is ambiguous or there are omissions therein, the following rules of construction apply:

1. Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount.

2. Where the instrument is not dated it will be considered to be dated as of the time it was issued.

3. Where there is conflict between the written and printed provisions of the instrument the written provisions prevail.

4. Where the instrument is so ambiguous that there is doubt whether it is a bill or a note the holder may treat it as either at his election.

5. Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser.

6. Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon.—Rev., 2341.

Note.—For time from which interest runs, see s. 2521 infra.

2912. Who primarily and secondarily liable.—The person primarily liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are secondarily liable.—Rev., 2342.

2913. Reasonable time determined by usage.—In determining what is reasonable time or an unreasonable time regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments and the facts of the particular case.—Rev., 2343.

2914. Law merchant applicable.—In any case not provided for in this chapter the rules of the law merchant shall govern.—Rev., 2344.

2915. This chapter not retroactive.—The provisions of this chapter do not apply to negotiable instruments made and delivered prior to the eighth day of March, one thousand eight hundred and ninety-nine.—Rev., 2345.

2916. This chapter not to authorize certain things.—Nothing in this chapter shall authorize the enforcement of an authorization to confess judgment or a waiver of homestead and personal property exemptions or a provision to pay counsel fees for collection incorporated in any of the instruments mentioned in this chapter; but the mention of such provisions in such instruments shall not affect the other terms of such instruments or the negotiability thereof.—Rev., 2346.

CHAPTER L.

NOTARIES.

2917. Appointed by governor; qualified before clerk.—The governor may, from time to time, at his discretion, appoint one or more fit persons in every county, to act as notaries public, who shall hold their office for two years from and after the date of their appointment; and on exhibiting their commission to the clerk of the superior court of the county in which they are to act, shall be duly qualified, by taking before said clerk an oath of office, and the oaths prescribed for officers.—Rev., 2347.

2918. Commission; record of qualification by clerk.—The governor shall issue to each a commission, a certificate of which shall be deposited with the clerk of the court, and filed among the records, and he shall note on his minutes the qualification of the notary public.—Rev., 2348.

2919. Clerks notaries ex officio; may certify own seals.—The clerks of the superior court may act as notaries public, in their several counties, by virtue of their office as clerks, and may certify their notarial acts under the seals of their respective courts.—Rev., 2349.

2920. May take probates, administer oaths, etc.—Notaries public, in and out of the state, shall have power to take and certify the acknowledgment of proof of powers of attorney, mortgages, deeds and other instruments of writing, to take depositions and to administer oaths and affirmations in matters incident or belonging to the duties of their office, and to take affidavits to be used before a court, judge or other officer, within the state, and shall have power to take the privy examination of *femes covert*.—Rev., 2350.

Note.—For powers of notary of another state, see s. 990 of Revisal.

2921. May exercise power in other than own county.—Notaries public shall have full power and authority to perform the functions of their office in any and all counties of the state, and full faith and credit shall be given to any of their official acts wheresoever the same shall be made and done.—Rev., 2351.

2922. Must state expiration of commission.—Notaries public shall state after each official signature by them the date of the expiration of their commissions; but the failure to do so shall not thereby invalidate their official acts.—Rev., 2351 a.

2923. Seal.—Official acts by notaries public shall be attested by their notarial seals.—Rev., 2352.

2924. Can not act when interested.—No notary public shall have power or authority to take the proof and acknowledgment of deeds or other papers required by law to be registered in the office of the register of deeds of a county, or to take the private examination of a *feme covert* to any such paper in which he is interested as attorney, counsel or otherwise, nor to administer an oath to any person to any affidavit or other paper in matters in which he is interested as attorney, counsel or otherwise.—Laws, 1907 c. 1003.

CHAPTER LI.

OATHS.

2925. Oaths administered with solemnity.—Whereas, lawful oaths for the discovery of truth and establishing right are necessary and highly conducive to the important end of good government; and being most solemn appeals to Almighty God, as the omniscient witness of

and the just and omnipotent avenger of falsehood, such oaths, therefore, ought to be taken and administered with the utmost solemnity.—Rev., 2353.

6. How administered.—Judges and justices of the peace, and all persons who may be empowered to administer oaths, shall (except in the cases in this chapter excepted) require the party sworn, to lay his hand upon the Holy Evangelists of Almighty God, in token of his engagement to speak the truth, as he hopes to be saved in the way and method of salvation pointed out in that blessed volume; and in further token, that, if he should swerve from the truth, he may be justly deprived of all the blessings of the Gospel, and made liable to that vengeance which he has imprecated on his own head; and he shall kiss the Holy Gospel, as a seal of confirmation to the said engagements.—Rev., 2354.

2927. Who may be sworn with uplifted hand; form of affirmation.—When the person to be sworn shall be conscientiously scrupulous of taking a book oath in manner aforesaid, he shall be excused from laying hands upon, or touching the Holy Gospel; and the oath required shall be administered in the following manner, namely: He shall stand with his right hand lifted up towards heaven, in token of his solemn appeal to the Supreme God, and also, in token that if he should swerve from the truth he would draw down the vengeance of heaven upon his head, and shall introduce the intended oath with these words, namely:

I, A. B., do appeal to God, as a witness of the truth and the avenger of falsehood, as I shall answer the same at the great day of judgment, when the secrets of all hearts shall be known, (etc., as the words of the oath may be).—Rev., 2355.

2928. How Quakers, Moravians, etc., affirm.—The solemn affirmation of Quakers, Moravians, Dunkers and Mennonists, made in the manner heretofore used and accustomed, shall be admitted as evidence in all civil and criminal actions; and in all cases where they are required to take an oath to support the constitution of the state, or of the United States, or an oath of office, they shall make their solemn affirmation in the words of the oath beginning after the word "swear"; which affirmation shall be effectual to all intents and purposes.—Rev., 2356.

2929. Oath to support constitution of United States; form of; all officers to take.—All members of the general assembly, and all officers who shall be elected or appointed to any office of trust or profit within the state, shall, agreeably to act of congress, take the following oath or affirmation:

I, A. B., do solemnly swear (or affirm, as the case may be) that I will support the constitution of the United States; so help me God.

Which oath shall be taken before they enter upon the execution of the duties of the office.—Rev., 2357.

2930. Oath or affirmation to support constitution; form of; taken by all officers.—Every member of the general assembly, and every person who shall be chosen or appointed to hold any office of trust or profit in the state, shall, before taking his seat or entering upon the execution of the office, take and subscribe the following oath or affirmation:

I, A. B., do solemnly and sincerely swear (or affirm) that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the constitution of said state, not inconsistent with the constitution of the United States, to the best of my knowledge and ability; so help me, God.

Where such person shall be of the people called Quakers, Moravians, Mennonists or Dunkers, he shall take and subscribe the following affirmation:

I, A. B., do solemnly and sincerely declare and affirm that I truly and faithfully demean myself as a peaceful citizen of North Carolina; that I will be subject to the powers and authorities that are fitly may be established for the good government thereof, not inconsistent with the constitution of the state and the constitution of the United States, either by yielding an active or passive obedience thereto, and that I will not abet or join the enemies of the state, by any means, in any conspiracy whatever, against the state; that I will disclose and make known to the legislative, executive or judicial powers of the state all treasonable conspiracies which I shall know to be made or intended against the state.—Rev., 2358.

2931. When deputies may administer.—In all cases where any civil officer, in the discharge of his duties, is permitted by the law to administer an oath, the deputy of such officer, when discharging such duties, shall have authority to administer it, provided he is a sworn officer; and the oath thus administered by the deputy shall be as obligatory as if administered by the principal officer, and shall be attended with the same penalties in case of false swearing.—Rev., 2359.

2932. Oaths of sundry persons, forms of.—The oaths of office to be taken by the several persons hereafter named, shall be in the words following the names of said persons respectively:

(1) Administrator.

You swear (or affirm) that you believe A. B. died without leaving any last will and testament; that you will well and truly administer all and singular the goods and chattels, rights and credits of the said A. B., and a true and perfect inventory thereof return according to law; and that all other duties appertaining to the charge reposed in you, you will well and truly perform, according to law, and with your best skill and ability; so help you, God.

(2.) Attorney at Law.

I, A. B., do swear (or affirm) that I will truly and honestly demean myself in the practice of an attorney, according to the best of my knowledge and ability; so help me, God.

(3.) Attorney General, State Solicitors and County Attorneys.

I, A. B., do solemnly swear (or affirm) that I will well and truly serve the State of North Carolina in the office of attorney general (or solicitor for the state or attorney for the state in the county of.....); I will, in the execution of my office, endeavor to have the criminal laws fairly and impartially administered, so far as in me lies, according to the best of my knowledge and ability; so help me, God.

(4.) Auditor.

I, A. B., do solemnly swear (or affirm) that I will well and truly execute the trust reposed in me as auditor, without favor or partiality, according to law, to the best of my knowledge and ability; so help me, God.

(5.) Book Debt Oath.

You swear (or affirm) that the matter in dispute is a book account; that you have no means to prove the delivery of such articles, as you propose to prove by your own oath, or any of them, but by yourself;

and you further swear that the account rendered by you is just and true; and that you have given all just credits; so help you, God.

(6.) Book Debt Oath for Administrator.

You, as executor or administrator of A. B., swear (or affirm) that you verily believe this account to be just and true, and that there are no witnesses, to your knowledge, capable of proving the delivery of the articles therein charged; and that you found the book or account so stated, and do not know of any other or further credit to be given than what is therein given; so help you, God.

(7.) Clerk of the Supreme Court.

I, A. B., do swear (or affirm) that, by myself or any other person, I neither have given, nor will I give, to any person whatsoever, any gratuity, gift, fee or reward, in consideration of my appointment to the office of clerk of the supreme court of North Carolina; nor have I sold, or offered to sell, nor will I sell, or offer to sell, my interest in the said office; I also solemnly swear that I do not, directly or indirectly, hold any other lucrative office in this state; I do further swear that I will execute the office of clerk of the supreme court without prejudice favor, affection or partiality, to the best of my skill and ability; so help me, God.

(8.) Clerk of the Superior Court.

I, A. B., do swear (or affirm) that, by myself or any other person, I neither have given, nor will I give, to any person whatsoever, any gratuity, fee, gift or reward, in consideration of my election or appointment to the office of clerk of the superior court for the county of _____; nor have I sold, or offered to sell, nor will I sell or offer to sell, my interest in said office; I also solemnly swear that I do not, directly or indirectly, hold any other lucrative office in the state; and I do further swear that I will execute the office of clerk of the superior court for the county of _____ without prejudice, favor, affection or partiality, to the best of my skill and ability; so help me, God.

(9.) Commissioners Allotting a Year's Provisions.

You and each of you swear (or affirm) that you will lay off and allot to the petitioner a year's provisions for herself and family according to law, and with your best skill and ability; so help you, God.

(10.) Commissioners Dividing and Allotting Real Estate.

You and each of you swear (or affirm) that, in the partition of the real estate now about to be made by you, you will do equal and impartial justice among the several claimants, according to their several rights, and agreeably to law; so help you, God.

(11.) Commissioner of Wrecks.

I, A. B., do solemnly swear (or affirm) that I will truly and faithfully discharge the duties of a commissioner of wrecks, for the district of _____, in the county of _____, according to law; so help me, God.

(12.) Constable.

I, A. B., do solemnly swear (or affirm) that I will well and truly serve the State of North Carolina in the office of constable; I will see and cause the peace of the state to be well and truly preserved and kept, according to my power; I will arrest all such persons, as in my sight, shall ride or go armed offensively, or shall commit or make any

riot, affray or other breach of the peace; I will do my best endeavor, upon complaint to me made, to apprehend all felons and rioters or persons riotously assembled, and if any such offenders shall make resistance with force, I will make hue and cry, and will pursue them according to law, and will faithfully and without delay execute and return all lawful precepts to me directed; I will well and truly, according to my knowledge, power and ability, do and execute all other things belonging to the office of constable, so long as I shall continue in office; so help me, God.

Cotton Weigher for Public.

I,, public weigher for the city of (or as the case may be), do solemnly swear that I will justly, impartially and without any deduction, except as may be allowed by law, weigh all cotton that may be brought to me for that purpose, and tender a true account thereof to the parties concerned, if required to do so; so help me, God.

(14.) Entry-Taker.

I, A. B., do solemnly swear (or affirm) that I will well and impartially discharge the several duties of the office of entry-taker for the county of according to law; so help me, God.

(15.) Executor.

You swear (or affirm) that you believe this writing to be and contain the last will and testament of A. B., deceased; and that you will well and truly execute the same by first paying his debts and then his legacies, as far as the said estate shall extend or the law shall charge you; and that you will well and faithfully execute the office of an executor, agreeably to the trust and confidence reposed in you, and according to law; so help you, God.

(16.) Finance Committee.

I, A. B., do solemnly swear (or affirm) that I will diligently inquire into all matters relating to the receipts and disbursements of county funds and a true report make, without partiality; so help me, God.

(17.) Grand Jury—Foreman of.

You, as foreman of this grand inquest for the body of this county, shall diligently inquire and true presentment make of all such matters and things as shall be given you in charge; the state's counsel, your fellows' and your own you shall keep secret; you shall present no one for envy, hatred or malice; neither shall you leave any one unpresented for fear, favor or affection, reward or the hope of reward; but you shall present all things truly, as they come to your knowledge, according to the best of your understanding; so help you, God.

(18.) Grand Jurors.

The same oath which your foreman hath taken on his part, you and each of you shall well and truly observe and keep on your part; so help you, God.

(19.) Grand Jury—Officer of.

You swear (or affirm) that you will faithfully carry all papers sent from the court to the grand jury, or from the grand jury to the court, without alteration or erasement, and without disclosing the contents thereof; so help you, God.

(20.) Jury—Officer of.

You swear (or affirm) that you will keep every person, sworn of this jury, together in some private or convenient place, without meat or drink (water excepted.) You shall not suffer any person to speak to them, neither shall you speak to them yourself, unless it be to ask them whether they are agreed in their verdict, but with leave of the court; so help you, God.

(21.) Jury, in Capital Case.

You swear (or affirm) that you will well and truly try, and true deliverance make, between the state and the prisoner at the bar, whom you shall have in charge, and a true verdict give according to the evidence; so help you, God.

(22.) Jury, in Criminal Actions not Capital.

You and each of you swear (or affirm) that you will well and truly try all issues in criminal actions which shall come before you during this term, and true verdicts give according to the evidence thereon; so help you, God.

(The same oath to talesmen, by using the word "day" instead of "term.")

(23.) Jury, in Civil Actions.

You and each of you swear (or affirm) that you will well and truly try all civil actions which shall come before you during this term, and true verdicts give according to the evidence; so help you, God.

(The same oath to talesmen, by using the word "day" instead of "term.")

(24.) Jury, Laying off Dower.

You and each of you swear (or affirm) that you will, without partiality and according to your best judgment, lay off and allot to A. B., widow of C. D., such dower in the lands of said C. D., as by law she is entitled to: So help you, God.

(25.) Jury, Laying Off Roads and Assessing Damages.

I, A. B., do solemnly swear (or affirm) that I will lay out the road, directed to be laid out by the board of commissioners of the county, to the greatest ease and advantage of the inhabitants, and with as little prejudice to the owners of land over which the same shall be laid out as may be; and will truly and impartially assess the damages which may be awarded by me for injuries done to lands by the laying out of said road, without favor, affection, malice or hatred, to the best of my skill and knowledge; so help me, God.

(26.) Judge of the Supreme Court.

I, A. B., do solemnly swear (or affirm) that in my office of justice of the supreme court of North Carolina I will administer justice without respect to persons, and do equal right to the poor and the rich, to the state and to individuals; and that I will honestly, faithfully and impartially perform all the duties of the said office according to the best of my abilities, and agreeably to the constitution and laws of the state; so help me, God.

(27.) Judge of the Superior Court.

I, A. B., do solemnly swear (or affirm) that I will well and truly serve the state of North Carolina in the office of judge of the superior court of the said state; I will do equal law and right to all persons, rich and poor, without having regard to any person. I will not

wittingly or willingly take, by myself or by any other person, any fee, gift, gratuity or reward whatsoever, for any matter or thing by me to be done by virtue of my office, except the fees and salary by law appointed; I will not maintain, by myself or any other person, privately or openly, any plea or quarrel depending in any of the said courts; I will not delay any person of common right by reason of any letter or command from any person or persons in authority to me directed, or for any other cause whatsoever; and in case any letter or orders come to me contrary to law, I will proceed to enforce the law, such letters or orders notwithstanding; I will not appoint any person to be clerk of any of the said courts but such of the candidates as appear to me sufficiently qualified for that office; and in all such appointments I will nominate without reward, hope of reward, prejudice, favor or partiality or any other sinister motive whatsoever; and finally, in all things belonging to my office, during my continuance therein, I will faithfully, truly and justly, according to the best of my skill and judgment, do equal and impartial justice to the public and to individuals; so help me, God.

(28.) Justice of the Peace.

I, A. B., do solemnly swear (or affirm) that as a justice of the peace of the county of....., in all articles in the commission to me directed, I will do equal right to the poor and the rich, to the best of my judgment and according to the laws of the state; I will not, privately or openly, by myself or any other person, be of counsel in any quarrel or suit depending before me; the fines and amercements that shall happen to be made, and the forfeits that shall be incurred, I will cause to be duly entered without concealment; I will not wittingly or willingly take, by myself or any other person for me, any fee, gift, gratuity or reward whatsoever for any matter or thing by me to be done by virtue of my office, except such fees as are or may be directed and limited by statute; but well and truly I will perform my office of justice of the peace; I will not delay any person of common right, by reason of any letter or order from any person in authority to me directed, or for any other cause whatsoever; and if any letter or order come to me contrary to law I will proceed to enforce the law, such letter or order notwithstanding. I will not direct or cause to be directed to the parties any warrant by me made, but will direct all such warrants to the sheriffs or constables of the county, or the other officers or ministers of the state, or other indifferent persons, to do execution thereto; and finally, in all things belonging to my office, during my continuance therein, I will faithfully, truly and justly, and according to the best of my skill and judgment, do equal and impartial justice to the public and to individuals; so help me, God.

(29.) Register of Deeds.

I, A. B., do solemnly swear (or affirm) that I will faithfully and truly, according to the best of my skill and ability, execute the duties of the office of register of deeds for the county of, in all things according to law; so help me, God.

(30.) Secretary of State.

I, A. B., do swear (or affirm) that I will, in all respects, faithfully and honestly execute the office of secretary of state of the State of North Carolina, during my continuance in office, according to law; so help me, God.

(31.) Sheriff.

I, A. B., do solemnly swear (or affirm) that I will execute the office of sheriff of county to the best of my knowledge and ability,

agreeably to law; and that I will not take, accept or receive, directly or indirectly, any fee, gift, bribe, gratuity or reward whatsoever, for returning any man to serve as a juror or for making any false return on any process to me directed; so help me, God.

(32.) Standard Keeper.

I, A. B., do swear (or affirm) that I will not stamp, seal or give any certificate for any steelyards, weights or measures, but such as shall, as near as possible, agree with the standard in my keeping; and that I will, in all respects, truly and faithfully discharge and execute the power and trust by law reposed in me, to the best of my ability and capacity; so help me, God.

(33.) State Treasurer.

I, A. B., do swear (or affirm) that, according to the best of my abilities and judgment, I will execute impartially the office of state treasurer, in all things according to law, and account for the public taxes; and I will not, directly or indirectly, apply the public money to any other use than by law directed; so help me, God.

(34.) Stray Values.

You swear (or affirm) that you will well and truly view and appraise the stray, now to be valued by you, without favor or partiality, according to your skill and ability; so help you, God.

(35.) Surveyor for the County.

I, A. B., do solemnly swear (or affirm) that I will well and impartially discharge the several duties of the office of surveyor for the county of, according to law; so help me, God.

(36.) Treasurer for a County.

I, A. B., do solemnly swear (or affirm) that, according to the best of my skill and ability, I will execute impartially the office of treasurer for the county of, in all things according to law; that I will duly and faithfully account for all public moneys that may come into my hands, and will not, directly or indirectly, apply the same, or any part thereof, to any other use than by law directed; so help me, God.

(37.) Witness to Depose before the Grand Jury..

You swear (or affirm) that the evidence you shall give to the grand jury, upon this bill of indictment against A. B., shall be the truth, the whole truth, and nothing but the truth; so help you, God.

(38.) Witness in a Capital Trial.

You swear (or affirm) that the evidence you shall give to the court and jury in this trial, between the state and the prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth; so help you, God.

(39.) Witness in a Criminal Action.

You swear (or affirm) that the evidence you shall give to the court and jury in this action between the state and A. B. shall be the truth, the whole truth, and nothing but the truth; so help you, God.

(40.) Witness in Civil Cases.

You swear (or affirm) that the evidence you shall give to the court and jury in this case now on trial, wherein A. B. is plaintiff and C. D. defendant, shall be the truth, the whole truth, and nothing but the truth; so help you, God.

(41.) Witness to Prove a Will.

You swear (or affirm) that you saw C. D. execute (or heard him acknowledge the execution of) this writing as his last will and testament; that you attested it in his presence and at his request; and that at the time of its execution (or at the time the execution was acknowledged) he was, in your opinion, of sound mind and disposing memory; so help you, God.

(42.) General Oath.

Any officer of the state or of any county or township, the form of whose oath is not given above, shall take an oath in the following form:

I, A. B., do swear (or affirm) that I will well and truly execute the duties of the office of according to the best of my skill and ability, according to law; so help me, God.—Rev., 2360.

2933. County surveyors may administer oaths, when.—The county surveyors of the several counties are empowered to administer oaths to all such persons as are required by law to be sworn in making partition of real estate, in laying off widows' dower, in establishing boundaries and in surveying vacant lands under warrants.—Rev., 2361.

2934. Administered by certain officers.—The chairman of the board of county commissioners and the chairman of the board of education of the several counties shall have power to administer oaths, in any matter or hearing before their respective boards.—Rev., 2362.

Note.—For power of sheriff to administer oath in homestead allotment, see s. 687 of Revisal.

For power of register of deeds to administer oaths, see s. 2657 infra.

2935. Certain oaths validated.—All oaths and affidavits made prior to the first day of March, one thousand eight hundred and ninety-nine, administered by authorized officers to persons with uplifted hands be and the same are hereby validated and made as legal and binding as if administered to persons laying hands on and kissing the Holy Evangelists of Almighty God, whether said oaths and affidavits were made by persons conscientiously scrupulous of taking a "book oath" or not, and whether such oaths and affidavits were made in other respects in strict compliance with section two thousand three hundred and fifty-four: Provided, that this section shall not affect the rights of the parties in actions now pending nor in any manner affect prosecutions for perjury claimed to have been heretofore committed.—Rev., 2363.

CHAPTER LII.**OFFICES.**

2936. No person shall hold more than one office.—No person who shall hold any office or place of trust or profit under the United States, or any department thereof, or under this state, or under any other state or government, shall hold or exercise any other office or place of trust or profit under the authority of this state, or be eligible to a seat in either house of the general assembly: Provided, that nothing herein contained shall extend to officers in the militia, justices of the peace, commissioners of public charities, or commissioners for special purposes.—Rev., 2364.

2937. Penalty for holding office contrary to constitution.—If any person shall presume to hold any office, or place of trust or profit, or be elected to a seat in either house of the general assembly, contrary to the seventh section of the fourteenth article of the constitu-

tion of the state, he shall forfeit and pay two hundred dollars to any person who will sue for the same.—Rev., 2365.

2938. Bargains made for office void.—All bargains, bonds and assurances made or given for the purchase or sale of any office whatsoever, the sale of which is contrary to law, shall be void.—Rev., 2366.

2939. Must take oath before acting; penalty for failure.—Every officer and other person who may be required to take an oath of office, or an oath for the faithful discharge of any duty imposed on him, and also the oath appointed for such as hold any office of trust or profit in the state, shall take all said oaths before entering on the duties of the office, or the duties imposed on such person, on pain of forfeiting five hundred dollars to the use of the poor of the county in or for which the office is to be used, and of being ejected from his office or place by proper proceedings for that purpose.—Rev., 2367.

2940. Persons holding, deemed doing so lawfully; hold until their successors are qualified.—Any person who shall, by the proper authority, be admitted and sworn into any office, shall be held, deemed, and taken, by force of such admission, to be rightfully in such office, until, by judicial sentence, upon a proper proceeding, he shall be ousted therefrom, or his admission thereto be, in due course of law, declared void; and all officers shall continue in their respective offices until their successors shall have been elected or appointed, and shall have been duly qualified.—Rev., 2368.

CHAPTER LIII.

OYSTERS AND FISH.

2941. (For sections relative to the above entitled matter, see sections 2369 to 2484, inclusive, of the Revisal of 1905.)

CHAPTER LIV.

PARTITION.

1. Procedure.

2942. As in special proceedings.—The procedure in all cases for partition, under this chapter, shall be the same, in all respects, as prescribed by law in other special proceedings, except as modified herein.—Rev., 2485.

2943. Venue.—The proceedings for partition, actual or by sale, must be instituted in the county where the land lies. If the land to be partitioned lies in more than one county, the proceedings may be instituted in either of the counties.—Rev., 2486.

2944. Petition filed; commissioners appointed.—The superior courts on petition of one or more persons claiming real estate as tenants in common, shall appoint three disinterested commissioners to divide and apportion such real estate, or so much thereof as the court may deem best, among the several tenants in common.—Rev., 2487.

2945. Separate partition of surface and mineral interests.—When the title to the mineral interests in any land has become separated from the surface in ownership the tenants in common of such mineral interests may have partition of the same, distinct from the surface, and without joining as parties the owner or owners of the surface; and the tenants in common of the surface may have partition of the same, in manner provided by law, distinct from the mineral interests and

without joining as parties the owner or owners of the mineral interests. And in all instances where the mineral interests and surface interests have thus become separated in ownership, the owner or owners of the mineral interests shall not be compelled to join in a partition of the surface interests, nor shall the owner or owners of the surface interests be compelled to join in a partition of the mineral interests, nor shall the rights of either owner be prejudiced by a partition of the other interests.—Rev., 2488.

2946. Of homestead, at instance of judgment creditor.—Whenever any person owns a judgment duly docketed in the superior court of a county wherein the judgment debtor owns an undivided interest in fee in land as a tenant in common, and such judgment creditor may desire to lay off the homestead of the judgment debtor in said land and sell the excess, if any, to satisfy his judgment, said judgment creditor may institute before the clerk of the court of the county wherein the land lies a special proceeding for partition of said land between the tenants in common, making the judgment debtor, the other tenants in common and all other interested persons parties to said proceeding by summons. The proceeding shall then be in all other respects conducted as other special proceedings for the partition of land between tenants in common. Upon the actual partition of said land the judgment creditor may sue out execution on his judgment, as allowed by law, and have the homestead of the judgment debtor allotted to him and sell the excess, as in other cases where the homestead is allotted under execution. The remedy provided for in this section shall not deprive the judgment creditor of any other remedy in law or in equity which he may have for the enforcement of his judgment lien.—Rev., 2489.

2947. Unknown persons interested, representative appointed.—If, upon the filing of a petition for partition it be made to appear to the court by affidavit or otherwise that there are any persons interested in the premises whose names are unknown to, and can not after due diligence be ascertained by the petitioner, the court shall order notices to be given to all such persons by a publication of the petition, or of the substance thereof, with the order of the court thereon, in one or more newspapers to be designated in the order. If after such general notice by publication any person interested in the premises and entitled to notice fails to appear, the court shall in its discretion appoint some disinterested person to represent the owner of any shares in the property to be divided, the ownership of which is unknown and unrepresented.—Rev., 2490.

2948. How commissioners summoned; their duty.—The commissioners, who shall be summoned by the sheriff, or any constable, must meet on the premises and partition the same among the tenants in common, according to their respective rights and interests therein, by dividing the land into equal shares in point of value as nearly as possible, and for this purpose they are empowered to subdivide the more valuable tracts as they may deem best, and to charge the more valuable dividends with such sums of money as they may think necessary, to be paid to the dividends of inferior value, in order to make an equitable partition. If there be any of the tenants in common whose names are not known or whose title is in dispute the share or shares of such persons shall be set off together as one parcel.—Rev., 2491.

Upon partition of land among tenants in common, the tenant who has improved a part thereof is entitled to have it allotted to him at a valuation without regard to the improvements.—*Collett v. Henderson*, 80—330.

Charges for equality of partition should be enforced by proceedings against the more valuable shares divided, and not by personal judgments against the owners thereof.—*Waring v. Wadsworth*, 80—345.

2949. Oath of commissioners.—The commissioners shall be sworn by a justice of the peace or other person authorized to administer

oaths, to do justice among the tenants in common, in respect to such partition, according to their best skill and ability.—Rev., 2492.

2950. Commissioners may employ surveyor.—The commissioners are authorized to employ the county surveyor, or in his absence, or if he be connected with the parties, some other surveyor, who shall make out a map of the premises showing the quantity, courses and distances of each share, which map shall accompany and form a part of the report of the commissioners.—Rev., 2493.

2951. Report; contents; impeached, when.—The commissioners, within a reasonable time, not exceeding sixty days after the notification of their appointment, shall make a full and ample report of their proceedings, under the hands of any two of them, specifying therein the manner of executing their trust and describing particularly the land or parcel of land divided, and the share allotted to each tenant in severalty, with the sum or sums charged on the more valuable dividends to be paid to those of inferior value. The report shall be filed in the office of the superior court clerk, and if no exception thereto be filed within twenty days, the same shall be confirmed: Provided, that any party after confirmation may impeach the proceedings and decrees for mistake, fraud or collusion by petition in the cause: Provided further, that innocent purchasers for full value and without notice shall not be affected thereby.—Rev., 2494.

2952. Confirmation; effect; where registered.—Such report, when confirmed, together with the decree of confirmation, shall be enrolled and certified to the register of deeds and registered in the office of the county where such real estate is situated, and shall be binding among and between the claimants, their heirs and assigns.—Rev., 2495.

2953. Owelty bears interest.—The sums of money due from the more valuable dividends shall bear interest until paid.—Rev., 2496.

2954. Owelty charged against minors, when payable.—When a minor to whom a more valuable dividend shall fall is charged with the payment of any sum the money shall not be payable until such minor arrives at the age of twenty-one years, but the general guardian, if there be one, must pay such sum whenever assets shall come into his hands, and in case the general guardian shall have assets which he did not so apply, he shall pay out of his own proper estate any interest that may have accrued in consequence of such failure.—Rev., 2497.

2955. Delay by commissioner.—If, after accepting the trust, any of the commissioners unreasonably delay or neglect to execute the same, every such delinquent commissioner shall be liable for contempt and may be removed, and shall be further liable to a penalty of fifty dollars, to be recovered by the petitioner.—Rev., 2498.

2. Lands in Two States.

2956. Procedure.—Whenever on the death of any person, his lands in this state, and in another state, shall descend or be devised to several persons, who, by the law of this and the other state, shall hold in the lands undivided estates as tenants in common, or by any other undivided tenancy, and such heirs or devisees can not, without suit, have partition for want of consent, or because of inability in any of the cotenants, then, if such deceased person shall have been at the time of his death, a resident of the state, or not then a resident of any of the states, in which his lands lie, and in the last case the most valuable part of such lands shall lie in this state, such heir or devisee, or any person claiming under him, may file a petition in the superior court for the county where the deceased resided at his death, or where any part of the land lies in this state, setting forth all the lands in which the plaintiff has an undivided estate, without and within

the state, described by their names and boundaries, or by the adjoining tracts, and also the estate the deceased had in them, and the supposed value of the lands in each state, and the share, in severalty, to which the plaintiff and each of his cotenants is entitled under the laws of the several states, and praying for partition to be made of all the tracts, according to their respective interests, and the material facts set forth in the petition shall be verified by the affidavit of the plaintiff or his guardian, or other person, at the discretion of the court; and all persons concerned in interest in the lands shall be made parties, according to the practice of the superior court in this state.—Rev., 2499.

2957. When court may decree partition.—On hearing of the petition, the court may decree a partition; and shall allot in severalty to each tenant his just share of the lands, according to the value of his interest in the same, by the laws of the several states, in which they are situated.—Rev., 2500.

2958. Commissioners appointed, when; their duty; final decree; deed compelled; effect of decree.—The court making such decree shall issue a commission to three respectable freeholders in this or any state where any part of the land may lie, unconnected by blood or interest with the parties, directing them or a majority of them, to make partition between the cotenants, plaintiffs and defendants in said petition, and to assign each his respective share in the value, in severalty, in any tract or tracts, in any or all the states; and before making the allotment the commissioners shall make a valuation of all the lands held by the cotenants in all the said states; and where they can not, without injury to the value of some shares, make an exact division of the lands, they shall charge the more valuable dividends with money to be paid to the tenants of a less valuable dividend to make equality of partition, and they shall report their proceedings as they may be directed, and the reports shall contain a valuation of all the estate in this and the other states, and the division among the cotenants according to such valuation; and the court may confirm such report, or on sufficient cause shown, may correct and alter, or set it aside and order a new commission; and where any sum is charged upon a more valuable dividend, the court may direct, if the tenant taking such a dividend be an infant, that the sum charged shall not be paid till a future day, and the same shall bear interest at a rate not greater than allowed in this state: Provided, that the tenant of the larger dividend may discharge himself from accruing interest by paying the whole amount due at any time; and the sum due from the greater dividend shall be a charge on the land into whose hands soever it may come, although it may be taken without notice; and the court shall, upon the confirmation of any report of the commissioners, make a final decree. And where all the parties are within the jurisdiction of this court, the court shall, by the usual proceedings, direct and compel the parties to execute and deliver deeds and assurances, sufficient, by the laws of this state and the other states, to give the partition full force and validity in all the states; and in case any of the parties are under such disabilities that they can not execute such assurances, or are without the jurisdiction of the court, then the court, upon receiving evidence from the plaintiff that, by a law of the other state in which lie the parts of the lands described in the petition to be without this state, the decree can have effect thereon, shall direct the decree to be enrolled, and a copy of it shall be registered in the register's office of all the counties within this state where any of the lands lie; and a copy shall also be furnished to the plaintiff or other party interested, duly certified, to the end that, as to the lands without this state, it may be carried into effect in the state in which the said lands may be, in such manner as said state may direct; and on satisfactory evidence being

made to the court in this state that the decree may have full effect by the law of such other state, the court in this state shall by its decree declare the partition in the land in this state to be final and conclusive; and the decree shall be firm and irreversible, as hereinafter provided; and shall, on registration as aforesaid, pass to the tenants the title in severalty to the lands in this state in the same manner as if all the land mentioned in the decree were situate within this state.—Rev., 2501.

2959. When decree of another state enforced.—Where real estate may be partly in this state and partly in another state, and the deceased person from whom it was derived by descent or devise, was, at the time of his death, a resident of some other state, or was a resident of none of the states in which he held lands, and in this last case, the lands of which he was seized in this state were of less value than the lands of which he was seized in any other state, the courts of the state in which such deceased person had his residence at his death, or in which he held lands of greater value than those he held in this state, shall have full power and authority, under any law passed by the legislature of such state, substantially in accordance with the provisions herein made on this subject, to decree partition of the lands in this state, together with those within such other state, in the same manner as if the whole real estate were within the jurisdiction of such court, and in the same manner as the courts in this state are directed and authorized to do by the preceding section, as to the lands of deceased persons resident here at their death, or leaving lands of greater value here than in any other state; and in case any person having an interest in the final decree, made as aforesaid in another state, as to lands in this state, shall, within twelve months after the same may be entered up in the courts of said state, produce the records and proceedings of such courts of record duly certified to a superior court of any county in this state, where any of the lands of this state lie, the court, on petition ex parte in such case, shall order such proceedings to be entered of record in the court of this state, and order that the said decree shall be of the same force and validity as if it had been a decree of the court in this state in which the petition is filed, upon a petition and regular proceedings had thereon, and the decree of the court of such other state, and the proceedings on it by petition in the superior court in this state confirming it and giving it validity, being enrolled in the said court of this state and registered in all the counties where the lands lie in this state, shall pass the lands in this state, according to the decree, and shall vest estates in severalty therein declared, as to said lands, in the same manner and with the same effect in law as if the lands in this state had been so allotted on a petition for partition, according to the provisions of the former sections of this chapter.—Rev., 2502.

2960. Decree in another state, how validity passed on.—Where a copy of a decree and proceedings of a suit in any other state shall be produced, as in the preceding section, and also when it is necessary for a superior court to be certified that its decree of a partition of lands without this state and within the territory of another state, can have effect therein, it shall be competent for the judge of the superior court before which the existence of a law in such other state is to be proved, to decide whether any act of the legislature of such state has been passed.—Rev., 2503.

3. Personal Property.

2961. How made.—When any persons entitled as tenants in common of personal property desire to have a division of the same, they, or either of them, may file a petition in the superior court for that purpose; and the court, if it think the petitioners entitled to relief, shall

appoint three disinterested commissioners, who, being first duly sworn, shall proceed within twenty days after notice of their appointment, to divide such property as nearly equal as possible among the tenants in common.—Rev., 2504.

2962. Commissioners to report; exceptions; confirmation.—The commissioners shall report their proceedings under the hands of any two of them, and file their report in the office of the clerk of the superior court within five days after the partition was made, and if no exception thereto be filed within twenty days, the same shall be confirmed: Provided, that any party, after confirmation, shall be allowed to impeach the proceedings and decrees for mistake, fraud or collusion, by petition in the cause: Provided further, that innocent purchasers for full value and without notice shall not be affected thereby.—Rev., 2505.

Note.—For pay of commissioners, see Salaries and Fees.

4. Sale of Land.

2963. Part sold and part divided.—In all proceedings under this chapter actual partition may be made of part of the land sought to be partitioned and a sale of the remainder, or a part only, of any land held by tenants in common may be partitioned and the remainder held in common.—Rev., 2506.

2964. Sale of mineral interests.—In case of the partition of mineral interests, in all instances where it shall be made to appear to the court that it would be for the best interests of the tenants in common of such interests to have the same sold, or if actual partition of the same can not be had without injury to some or all of such tenants in common, then it shall be lawful for and the duty of the court to order a sale of such mineral interests and a division of the proceeds as the interests of the parties may appear.—Rev., 2507.

2965. Expectancy may be sold.—The existence of a life estate in any land shall not be a bar to a sale for partition of the remainder or reversion thereof, and for the purposes of partition the tenants in common shall be deemed seized and possessed as if no life estate existed. But this shall not interfere with the possession of the life tenant during the existence of his estate.—Rev., 2508.

2966. Life tenant and remainderman may sell; life estate valued.—In all proceedings for partition of land wherein there is a life estate, the life tenant may join in the proceeding and on a sale the interest on the value of the share of the life tenant shall be received and paid to such life tenant annually; or in lieu of such annual interest, the value of such share during the probable life of such life tenant shall be ascertained and paid out of the proceeds to such life tenant absolutely.—Rev., 2509.

Note.—See also s. 2974 infra.

2967. Timber trees may be sold; life tenant's estate valued.—Whenever two or more persons shall own, as tenants in common, or coparceners, a tract of land, either in possession, or in remainder or reversion, subject to a life estate, on which there may be standing timber trees, a sale of said timber trees, separate from the land, may be had upon the petition of one or more of said owners, or the life tenant, for partition among the owners thereof, including the life tenant, upon such terms as the court may order, and under like proceedings as are now prescribed by law for the sale of land for partition: Provided, that when the land is subject to a life estate, the life tenant shall be made a party to the proceedings, and shall be entitled to receive his portion of the net proceeds of sales, to be ascertained under the mortuary tables established by law.—Rev., 2510.

2968. Disputed ownership of one share; sale ordered, and ownership reserved.—If in any partition proceeding two or more appear as defendants claiming the same share of the premises to be divided, or if any part of the share claimed by the petitioner is disputed by any defendant or defendants, it shall not be necessary to decide on their respective claims before the court shall order the partition or sale to be made, but the partition or sale shall be made, and the controversy between the contesting parties may be afterwards decided either in the same or an independent proceeding.—Rev., 2511.

2969. When sale ordered; terms.—Whenever it appears by satisfactory proof that an actual partition of the lands can not be made without injury to some or all of the parties interested, the court shall order a sale of the property described in the petition, or any part thereof, to be made by some person appointed by the court, on such terms as to size of lots, place or manner of sale, time of credit and security for payment of purchase money, as may be most advantageous to the parties concerned, and, on the coming in of the report of sale and confirmation thereof, and payment of the purchase money, the title shall be made to the purchaser or purchasers at such time and by such person as the court may direct, and in all cases where the persons in possession have been made parties to the proceeding, the court may grant an order for possession. And the deed of the officer or person designated to make such sale shall convey to the purchaser such title and estate in the property as the tenants in common hold.—Rev., 2512.

2970. Who may sell; confirmation; impeachment.—The court may authorize any officer thereof, or any other competent person, to be designated in the decree of sale, to sell the real estate under this proceeding; but no clerk of any court shall appoint himself or his deputy to make sale of real property or any property in any proceeding before him. Such officer or person shall file his report of sale, giving full particulars thereof, within ten days after the sale, in the office of the clerk of the superior court, and if no exception thereto is filed within twenty days, the same shall be confirmed: Provided, that any party, after the confirmation, shall be allowed to impeach the proceedings and decrees for mistake, fraud or collusion, by petition in the cause: Provided further, that innocent purchasers for full value and without notice shall not be affected thereby.—Rev., 2513.

2971. How sale advertised.—The notice of sale, under this proceeding, shall be the same as required by law on sales of real estate by sheriff under execution.—Rev., 2514.

2972. Confirmation of report in sale for division.—Upon confirmation of the report, the court shall secure to each tenant in common his ratable share in severalty of the proceeds of sale.—Rev., 2515.

2973. How proceeds of sale secured to infants, etc.—When a sale is made under this chapter, and any party to the proceedings be an infant, a married woman, non compos mentis, imprisoned, or beyond the limits of the state, or when the name of any tenant in common is not known, it shall be the duty of the court to decree the share of such party, in the proceeds of sale, to be so invested or settled that the same may be secured to such party or his real representative.—Rev., 2516.

2974. Land partitioned or sold subject to dower; dower sold.—When there is dower or right of dower on any land, petitioned to be sold or divided in severalty by actual partition, the woman entitled to dower or right of dower therein may join in the petition. The land to be divided in severalty shall be allotted to the tenants in common, subject to the dower right or dower, and either may be asked and assigned at the same time that partition thereof is made and by same commis-

sioners. On a decree of sale, the interest of one-third of the proceeds shall be secured and paid to her annually; or in lieu of such annual interest, the value of an annuity of six per cent. on such third, during her probable life, shall be ascertained and paid to her absolutely out of the proceeds.—Rev., 2517.

Note.—See also s. 2965 infra.

5. Sale, Public Use.

2975. Land required for public use, how sold.—When the lands of joint tenants or tenants in common are required for public purposes, one or more of such tenants, or their guardian for them, may file a petition verified by oath, in the superior court of the county where the lands, or any part of them lie, setting forth therein that the lands are required for public purposes, and that their interests would be promoted by a sale thereof; whereupon the court, all proper parties being before it, and the facts alleged in the petition being ascertained to be true, shall order a sale of such lands, or so much thereof as may be necessary, in the manner and on the terms it deems expedient. And the expenses, fees and costs of this proceeding shall be paid in the discretion of the court.—Rev., 2518.

Note.—See ss. 2295, 2297, infra, and 2590 of Revisal.

6. Sale of Personalty.

2976. When ordered; how made.—If a division of personal property owned by any persons as tenants in common can not be had without injury to some of the parties interested, and a sale thereof be deemed necessary, the court shall order a sale to be made by some officer of the court or other competent person, who shall file his report of sale in the office of the clerk of the court within ten days after sale, and if no exception thereto be filed within twenty days, the same shall be confirmed: Provided, that any party, after confirmation, shall be allowed to impeach the proceedings and decrees for mistake, fraud or collusion, by petition in the cause: Provided further, that innocent purchasers for full value and without notice shall not be affected thereby.—Rev., 2519.

2977. How sale advertised; terms.—The sale shall be made after twenty days' notice, by advertisement in three or more public places in the county, and shall be on such terms as the court may direct.—Rev., 2520.

CHAPTER LV.

PARTNERSHIP.

1. Limited Partnership.

2978. For what purposes formed.—Limited partnerships for the transaction of any mercantile, manufacturing or mechanical business within the state may be formed by two or more persons, upon the terms and with the rights and powers and subject to the conditions and liabilities in this chapter; but its provisions shall not be construed to authorize any such partnership for the conducting of a banking or insurance business, other than writing or soliciting insurance.—Rev., 2521.

2979. General and special partners joined; liability of special. Such partnerships may consist of one or more persons, who are general partners, and are jointly and severally responsible as partners are now by law, and of one or more persons, who contribute in actual cash payments a specific sum as capital to the common stock, who are

called special partners, and who are not liable for the debts of the partnership beyond the funds so contributed to the capital.—Rev. 2522.

2980. Must make certificate; what to contain.—The persons desirous of forming such partnership must make and severally sign a certificate containing: First, the name or firm under which such partnership is to be conducted; second, the general nature of the business to be transacted; third, the names of all the general and special partners interested therein, distinguishing which are general and which are special partners, and their respective places of residence; fourth, the amount of capital which each special partner has contributed to the common stock; fifth, the period at which such partnership is to commence and terminate.—Rev., 2523.

2981. Registration of certificate.—The certificate must be acknowledged or proved before some one competent to take the probate of deeds and ordered registered in the same manner as provided for deeds, and must be registered in the county in which the principal place of business of such partnership is situated. If the partnership has places of business in different counties, a transcript of the certificate and acknowledgment certified by the register must be registered and filed in the register's office of each of such counties.—Rev., 2524.

2982. Affidavit of payment of cash.—At the time the certificate is ordered to be registered an affidavit of one or more of the general partners shall be made before the officer taking such acknowledgment, stating that the sums specified in the certificate to have been contributed by each of the special partners to the common stock have been actually in good faith paid in cash, and the said affidavit so made shall be registered with the original certificate.—Rev., 2525.

2983. Registration essential.—No such partnership shall be deemed to have been formed until such certificate and affidavit have been made, acknowledged or proven and registered as required in the preceding sections.—Rev., 2526.

2984. False statement, all general partners.—If any false statement is made in such certificate or affidavit, all the persons interested in such partnership shall be liable as general partners.—Rev., 2527.

2985. Publication of terms of.—The terms of the partnership must be published immediately after its formation for six successive weeks, in at least one newspaper in the same county or near the place of said partnership business, and if such publication be not made, the partnership shall be deemed general.—Rev., 2528.

2986. Affidavits of publication filed.—Affidavits of such publication, made by the proprietor of such newspaper in which the same is published, may be filed with the clerk of the superior court of the county in which such business is conducted, and shall be evidence of the fact.—Rev., 2529.

2987. Renewals and continuances.—Every renewal or continuance of such partnership beyond the time originally fixed for its duration must be certified, acknowledged and registered, and an affidavit of a general partner made and filed, and notice given by publication as required for its original formation, and every such partnership which is otherwise continued must be deemed a general partnership: Provided, the affidavit herein required may state that the amount of cash therein specified had been originally paid in good faith, and that it is represented by goods or merchandise then on hand, and has not been impaired in the course of trade.—Rev., 2530.

2988. Alteration in names, etc., a dissolution.—Every alteration which is made in the names of the partners, in the nature of the business, in the capital or shares thereof or in any other matter specified in the original certificate must be deemed a dissolution of the partner-

ship; and any such partnership which is in any manner carried on after such alteration has been made must be deemed a general partnership, unless renewed as a special partnership, according to the preceding sections.—Rev., 2531.

2989. Name of firm.—The business of the partnership must be conducted under a firm, in which the names of the general partners only are inserted, without the addition of the word "company" or any other general term, except the word "limited"; and if the name of any special partner is used in the firm with his privity, he shall be deemed a general partner.—Rev., 2532.

2990. Actions as in general partnership.—Suits in relation to the business of the partnership may be brought and conducted by and against the general partner in the same manner as if there was no special partner.—Rev., 2533.

2991. Special stock not withdrawn.—No part of the sum which any special partner has contributed to the capital stock must be withdrawn by or paid to him in the shape of dividends, profits or otherwise, at any time during the continuance of the partnership; but any partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest does not reduce the original amount of such capital; and if, after the payment of such interest, any profits remain to be divided, he may receive his portion of such profits.—Rev., 2534.

2992. Depleted capital made good, when.—If it appears by the payment of interest or profits to any special partner that the original capital has been reduced, the partner receiving the same is bound to restore the amount necessary to make good his share of the capital without interest.—Rev., 2535.

2993. Rights of special partner.—A special partner may from time to time examine into the state and progress of the partnership concern; may advise as to its management and act as attorney at law, but must not transact any other of the partnership business, nor be employed for that purpose as agent or otherwise; and if he interfere contrary to this section he is deemed a general partner.—Rev., 2536.

2994. Accounting inter se.—The general partners are liable to account to each other, and to the special partners for their management of the partnership, as other partners.—Rev., 2537.

2995. Effect of insolvency.—In case of the bankruptcy or insolvency of the partnership, no special partner, under any circumstances, is to be allowed to claim as a creditor until the claims of all the other creditors of the partnership are satisfied.—Rev., 2538.

2996. Dissolution.—No dissolution of such partnership by the acts of the parties must take place before the time specified in the certificate of its formation, or in the certificate of its renewal, until a notice of its dissolution has been registered in the register's office in which the original certificate was registered, and published once a week for four successive weeks in the nearest newspaper to each of the places where the partnership transacts its business.—Rev., 2539.

2. Surviving Partners.

2997. Inventory by, in sixty days: copy to personal representative.—When a member of any partnership dies, the surviving partner, within sixty days after the death of the deceased partner, together with the personal representative of the deceased partner, shall make out a full and complete inventory of the assets of the partnership, including real estate, if there be any, together with a schedule of the debts and liabilities thereof, a copy of which inventory and schedule shall be retained by the surviving partner, and a copy thereof shall be fur-

nished to the personal representative of the deceased partner.—Rev., 2540.

2998. On refusal of, personal representative may take inventory; receiver appointed, when.—If the surviving partner neglect or refuse to have said inventory made, the personal representative of the deceased partner may have the same made in accordance with the provisions of the preceding section. Should any surviving partner fail to take such an inventory or refuse to allow the personal representative of the deceased partner's estate to do so, such personal representative of the deceased partner's estate may forthwith apply to a court of competent jurisdiction for the appointment of a receiver for said partnership, who shall thereupon proceed to wind up the same and dispose of the assets thereof in accordance with law.—Rev., 2541.

2999. Notice to creditors.—Every surviving partner within thirty days after the death of the deceased partner, shall notify all persons having claims against the partnership which were in existence at the time of the death of the deceased partner, to exhibit the same to the surviving partner within twelve months from date of first publication of said notice. The notice shall be published once a week for four weeks in a newspaper (if there be any) published in the county where the partnership existed. If there should be no newspaper published in the county, then the said notice shall be posted at the courthouse and four other public places in the county.—Rev., 2542.

3000. Debts without lien paid pro rata.—All debts and demands against a copartnership, where one partner has died, shall be paid pro rata, except debts which are a specific lien on property belonging to the partnership.—Rev., 2543.

3001. Action on claim not presented in twelve months.—In an action brought on a claim which was not presented within twelve months from the first publication of the general notice to creditors, the surviving partner shall not be chargeable for any assets that he may have paid in satisfaction of any debts before such action was commenced, nor shall any costs be recovered in such action against the surviving partner.—Rev., 2544.

3002. Appraisal for purchase by surviving partner; when he can not purchase; approval of clerk.—The surviving partner may, if he so desire, make application to the clerk of the superior court of the county in which the partnership existed, after first giving notice to the executor or administrator of the time of the hearing of such application, for the appointment of three judicious, disinterested appraisers, one of whom may be named by the surviving partner, one by the representative of the deceased partner's estate, and the third named by the two appraisers selected, whose duty it shall be to make out, under oath, a full and complete inventory and appraisement of the entire assets of the partnership, including real estate, if there be any, together with a schedule of the debts and liabilities thereof, and to deliver the same to the surviving partner, and shall also deliver a copy to the executor or administrator. The surviving partner may, with the consent of the executor or administrator of the deceased partner and the approval of the clerk of the superior court by whom such executor or administrator was appointed, purchase the interest of said deceased partner in the partnership assets at the appraised value thereof, including the good will of the business, first deducting therefrom the debts and liabilities of the partnership, for cash or upon giving to the executor or administrator his promissory note or notes, with good approved security, and satisfactory to the executor or administrator, for the payment of the interest of such deceased partner in the partnership assets. In case such surviving partner shall avail himself of the privileges of purchasing said interest as provided for in

this section, he shall give bond to said executor or administrator with surety for the payment of the debts and liabilities of said partnership, and for performance of all contracts for which said partnership is liable: Provided, that when the original articles of copartnership in force at the death of any partner or the will of a deceased partner makes the provisions for the settlement of such deceased partner's interest in said partnership, and for a disposition thereof different from that provided for in this chapter, the interest of such deceased partner in such partnership shall be settled and disposed of in accordance with the provisions of such articles of copartnership or of said will. In case of such sale of the real estate belonging to the partnership, the title to such real estate so purchased shall not pass until said sale of real estate is reported to and confirmed by the clerk of the superior court in the county in which said partnership was located, in a special proceeding in which the widow, heirs at law or devisees of such deceased partner are duly made parties.—Rev., 2545.

3003. Accounting in twelve months; time extended; commissions.

In case the surviving partner shall not avail himself of the privilege of purchasing the interest of the deceased partner, he shall, within twelve months from the death of the deceased partner, file with the clerk of the superior court of the county where the partnership was located, an account, under oath, stating his action as surviving partner and shall come to a settlement with the executor or administrator of the deceased partner: Provided, that the clerk of the superior court shall have power, upon good cause shown, to extend the time within which said final settlement shall be made. The surviving partner for his services in settling the partnership estate shall receive commissions to be allowed by the court, and in no case to exceed five per cent. out of the share of the deceased partner.—Rev., 2546.

3004. Accounting compelled.—In case any surviving partner fail to come to a settlement with the executor or administrator of the deceased partner within the time prescribed by law, the clerk of the superior court may, at the instance of such executor, administrator or other person interested in such deceased partnership estate, cite the surviving partners to a final settlement as provided for by law in the case of executors and administrators.—Rev., 2547.

CHAPTER LVI.

RAILROADS.

3005. Conductors and other employees to wear badge, when on duty.—Every conductor, baggage master, engineer, brakeman, or other servant of any railroad corporation employed on a passenger train, or at stations for passengers, shall wear upon his hat or cap a badge which shall indicate his office and the initial letters of the title of the corporation by which he is employed. No conductor or collector without such badge shall be entitled to demand or receive from any passenger any fare or ticket, or to exercise any of the powers of his office; and no officer or servant without such badge shall have authority to meddle or interfere with any passenger, his baggage or property.—Rev., 2604.

3006. Passenger conductors and depot agents declared special policemen.—All passenger conductors of railroad trains, and station or depot agents are hereby declared to be special police of the state of North Carolina, with full power and authority to make arrests for offenses committed in their presence or view, or for felony, or on sworn complaint for misdemeanor, except that the conductors shall

only have such power on board of their respective trains or their railroad right-of-way, and the agents at their respective stations; and said conductors and agents may cause any person or persons so arrested by them to be detained and delivered to the proper authority for trial as soon as possible. Nothing contained in the provisions of this act shall operate or have the effect to relieve any such railroad company from any civil liability now existing by statute or under the common law for the act or acts of such conductors, station or depot agents, in unlawfully exercising or attempting to exercise the powers herein conferred.—Laws 1907, c. 470.

3007. Trains to run on schedule; schedule published; must transport freight and passengers.—Every railroad corporation shall start and run their cars for the transportation of passengers and property at regular times to be fixed by public notice, and shall furnish sufficient accommodation for the transportation of all such passengers and property as shall, within a reasonable time previous thereto, be offered for transportation at the place of starting and the junction of other railroads and at usual stopping places established for receiving and discharging way passengers and freights for that train, and shall take, transport and discharge such passengers and property at, from and to such places, on the due payment of the freight or fare legally authorized therefor, and shall be liable to the party aggrieved, in an action for damages, for any neglect or refusal in the premises.—Rev., 2611.

3008. How cars arranged in passenger train.—In forming a passenger train, baggage, freight, merchandise or lumber cars shall not be placed in rear of the passenger cars, except in case of accident, or when the cars are provided with automatic couplers or brakes.—Rev., 2612.

3009. What trains may run on Sunday.—No railroad company shall permit the loading or unloading of any freight car on Sunday; nor shall permit any car, train of cars, or locomotive to be run on Sunday on any railroad, except in case of accident and except such as may be run for the purpose of transporting the United States mails and passengers with their baggage, and ordinary express freight in express cars exclusively, and except such as shall be run for the purpose of transporting fruits, vegetables, live stock and perishable freights. Where there are not sufficient cars of live stock or other perishable freights to make a complete train, or section of a train, the company may add other cars to complete the same: Provided, the word Sunday in this section shall be construed to embrace only that portion of the day between sunrise and sunset; and trains in transitu, having started on Saturday, may, in order to reach the terminus or shops, run until nine o'clock a. m. on Sunday, but not later, nor for any other purpose than to reach the terminus or shops.—Rev., 2613.

3010. Fast mail trains authorized; one train a day in each direction required.—The corporation commission is hereby empowered, whenever it shall appear wise and proper to do so, to authorize any railroad company to run one or more fast mail trains over its road, which shall only stop at such stations on the line of the road as may be designated by the company: Provided, that in addition to such fast mail train said railroad shall run at least one passenger train in each direction over its road on every day except Sunday, which shall stop at every station on the road at which passengers may wish to be taken up or put off: Provided further, that nothing in this section shall be construed as preventing the running of local passenger trains on Sunday.—Rev., 2614.

3011. May seize and use fuel.—If any railroad or other transportation company finds it necessary, in order to prevent delays in the transportation of freight or passengers, to take possession of coal, wood or

other fuel not its own property and convert it to its own use without an agreement with the owner thereof, it shall notify such owner within three days of such taking, giving date of said taking, and shall, within a period of thirty days, pay for such coal, wood or other fuel at the invoice price at place of shipment, plus twenty-five per cent. Should the transportation company fail to notify the consignee or owner within such three days or pay for said coal, wood or other fuel at the invoice price at place of shipment, plus twenty-five per cent as above provided, within thirty days after converting the same to its own use, it shall in addition forfeit to the party aggrieved the sum of twenty-five dollars for the first day of failure to notify such consignee of such appropriation of said fuel, or their failure to pay for the same, and five dollars for each day thereafter in which they shall fail to notify such consignee or pay for the same.—Rev., 2617; Laws 1907, c. 467.

3012. Regulations as to cleaning cars.—Section 1. Every person railroad company, whether incorporated or not, engaged in the regular business of carrying passengers on its railroad cars in this State, shall have their passenger-cars on their roads cleaned, brushed, dusted and the windows washed, if needed, at least once each day, and shall in each car, in which male and female passengers are carried, have therein a toilet-room for each sex, and have the same kept clean and decent.

Sec. 2. Any person or corporation engaged in the business described in section one of this act who shall wilfully or negligently fail or refuse to give orders to their agent or agents in charge of such cars to comply with the requirements of this act, shall forfeit twenty dollars for each day it so refuses, to be recovered by any person suing for said penalty.

Sec. 3. The wilful or negligent refusal or the failure on the part of the conductor or manager of any such passenger-cars as named in section one, to comply with said section one, shall be received as evidence of such failure or refusal of such person or railroad company to give said orders, and moreover such conductor or manager shall be guilty of a misdemeanor if he fail or refuse to carry out said orders of the person or company mentioned in section one of this act.—Laws 1907, c. 474.

3013. Passenger rate law.—No railroad company doing business as a common carrier of passengers in the State of North Carolina, except as hereinafter provided, shall charge, demand or receive for transporting any passenger, and his or her baggage not exceeding in weight two hundred pounds, from any station on its railroad in North Carolina to any other station on its said road in North Carolina, a rate in excess of two and one-quarter cents per mile, and for transporting children twelve years of age or under, one-half of the rate above prescribed: Provided, that the Corporation Commission of North Carolina is hereby authorized and empowered to permit all independently owned and operated railroad companies in North Carolina, whose mileage of road in said state is sixty miles or under, to charge a rate for transporting passengers not in excess of the present rate fixed and prescribed for said road; and also to permit all railroads constructed within the twelve months preceding the first day of January, one thousand nine hundred and seven, or at that time in course of construction, for a term of two years from and after July first, one thousand nine hundred and seven, and also such railroads as may be constructed within two years from January the first, one thousand nine hundred and seven, to charge such rate in excess of the rate above prescribed as the said Commission may determine to be reasonable. A charge of ten cents may be added to the fare of any passenger when the same is paid upon the cars if a ticket might have been procured within a reasonable time before the departure of the train; and no railroad company shall be required to accept a single fare of less than five cents.

In the case that any railroad company operating as a common carrier of passengers in the State of North Carolina is owned, controlled or operated by lease or other agreement by any other railroad company doing business in said state, the rate for carrying passengers thereon as prescribed by this act shall be determined for said railroad by the rate prescribed by this act for the railroad company which owns, controls or operates the same; and the North Carolina Corporation Commission shall publish the rates fixed by this act for the several railroad companies operating in this State, on or before the first day of June, one thousand nine hundred and seven.

Mileage books of one thousand miles in each book shall be kept on sale at such railroad ticket office in North Carolina as shall be named and designated by the Corporation Commission of North Carolina, and when such mileage book is purchased it shall be good in the hands of any person or persons named therein on all railroads on which the fare is the same as or less than the fare on the roads of the company selling such mileage book; and when the mileage is detached from said book by any other railroad company than the one which sold it, the said mileage shall be redeemable on demand by the railroad company which sold it.

Any railroad company violating any provision of this act shall be liable to a penalty of five hundred dollars, for each violation, payable to the person aggrieved by such violation, and recoverable in an action to be instituted in the name of said person in any court of this state having competent jurisdiction thereof. And any agent, servant or employee of any railroad company violating this act shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court.

Any person or persons, except those permitted by law, who accept free transportation, shall be guilty of a misdemeanor and, upon conviction, shall be fined or imprisoned, or both, in the discretion of the court.—Laws 1907, c. 216.

3014. Separate accommodations for different races.—All railroad and steamboat companies engaged as common carriers in the transportation of passengers for hire, other than street railways, shall provide separate but equal accommodations for the white and colored races at passenger stations or waiting rooms, and also on all trains and steamboats carrying passengers. Such accommodations may be furnished by railroad companies either by separate passenger cars or by compartments in passenger cars, which shall be provided by the railroads under the supervision and direction of the corporation commission: Provided, that this shall not apply to relief trains in cases of accident, to Pullman or sleeping cars, or through express trains that do not stop at all stations and are not used ordinarily for traveling from station to station, to negro servants in attendance on their employers, to officers or guards transporting prisoners, nor to prisoners so transported.—Rev., 2619.

3015. Corporation commission may exempt certain roads and trains.—The corporation commission is hereby authorized to exempt from the provisions of the preceding section steamboats, branch lines and narrow-gauged railroads and mixed trains carrying both freight and passengers, if in its judgment the enforcement of the same be unnecessary to secure the comfort of passengers by reason of the light volume of passenger traffic, or the small number of colored passenger travelers on such steamboats, narrow-gauge, branch lines or mixed trains.—Rev., 2620.

3016. When two races put in same coach.—When any coach or compartment car for either race shall be completely filled at a station where no extra coach or car can be had, and the increased number of passengers could not be foreseen, the conductor in charge of such

train may assign and set apart a portion of a car or compartment assigned for passengers of one race to passengers of the other race.—Rev., 2621.

3017. Penalty for failing to provide separate cars.—Any railroad company failing to comply in good faith with the provisions of the three preceding sections shall be liable to a penalty of one hundred dollars per day, to be recovered in an action brought against such company by any passenger on any train or boat of any railroad or steamboat company which is required by this chapter to furnish separate accommodations to the races, who has been furnished accommodations on such railroad train or steamboat in only a car or compartment with a person of a different race in violation of law.—Rev., 2622.

3018. Must check baggage; liable for loss.—A check shall be affixed to every parcel of baggage when taken for transportation by the agent or servant of such corporation, if there is a handle, loop or fixture so that the same can be attached upon the parcel or baggage so offered for transportation, and a duplicate thereof given to the passenger or person delivering the same on his behalf; and if such check be refused on demand the corporation shall pay to such passenger the sum of ten dollars, to be recovered in a civil action; and further, no fare or toll shall be collected or received from such passenger, and if such passenger shall have paid his fare the same shall be refunded by the conductor in charge of the train, and on producing said check, if his baggage shall not be delivered to him, he may, by an action, recover the value of said trunk or baggage.—Rev., 2623.

3019. Baggage handled carefully.—All railroad and steamboat companies shall handle with care all baggage and freights placed with them for transportation, and they shall be liable in damages for any and all injuries to the baggage or freight of persons from whom they have collected fare or charged freight, while the same is under their control; and upon proof of injury to baggage or freight in the possession or under the control of any such company, it shall be presumed that the injury was caused by the negligence of the company.—Rev., 2624.

3020. Ticket to intoxicated man refused.—The ticket agent of any railroad, steamboat or other transportation company shall at all times have power to refuse to sell a ticket to any person applying for the same who may at the time be intoxicated.—Rev., 2625.

3021. May prevent intoxicated person from entering.—The conductor, captain or other person in charge of any railroad car, steamboat, or other conveyance for the use of the traveling public, shall at all times have power to prevent any intoxicated person from entering such car, boat, or other conveyance.—Rev., 2626.

3022. Unused tickets to be redeemed.—When any round-trip ticket is sold by a railroad or transportation company it shall be the duty of such company to redeem the unused portion of said ticket by allowing to the holder thereof the difference between the cost thereof and the price of a one-way ticket between the stations for which such round-trip ticket was sold. Whenever any one-way or regular ticket is sold by a railroad or transportation company, and not used by the purchaser, it shall be the duty of the company selling the ticket to redeem it at the price paid for it. All railroad and transportation companies shall redeem all mileage tickets known as five-hundred, thousand and two-thousand mile tickets, sold by them, if presented within a year from the date of the sale, in money, when as much as fifty per centum of such ticket has been used by the purchaser, by paying the same price per mile paid for it, or shall allow the original holder to ride it out.—Rev., 2627.

3023. Injury to passengers on platform, etc.—In case any passenger on any railroad shall be injured while on the platform of a car or on any baggage, wood or freight car, in violation of the printed regulations of the company posted up at the time in a conspicuous place inside its passenger cars then in the train, such company shall not be liable for the injury: Provided, said company at the time furnish room inside its passenger cars sufficient for the proper accommodation of its passengers.—Rev., 2628.

3024. Refusing to pay fare, may eject.—If any passenger shall refuse to pay his fare, or violate the rules of the corporation, it shall be lawful for the conductor of the train and the servants of the corporation to put him and his baggage out of the cars, using no unnecessary force, at any usual stopping place or near any dwelling-house, as the conductor shall elect, on stopping the train.—Rev., 2629.

3025. Freight Rate Law.—The corporation commission, created by the laws of North Carolina, shall not, in fixing the maximum rates and charges or tariff of rates or charges for any common carrier transporting freight in North Carolina, permit or allow any such common carrier to charge, collect or receive a greater toll, charge or rate for the transportation of any article of freight or commodity embraced in the present classification fixed and prescribed, or approved by said corporation commission, where the initial point of shipment is on the road or line of one common carrier in this state and the terminal point of said shipment is on the line or road of another common carrier in this state, than is the sum of the present local rates now established, prescribed or approved by said corporation commission, less a reduction of twenty-five per centum of the said local rates on all railroads for which there is now made or prescribed a reduction for a joint haul; and on those railroads for which there is not now prescribed a reduction on joint hauls a reduction of fifteen per centum of the local rates now established, prescribed by said corporation commission for said railroads: Provided, that those railroads of this class whose rates are lower than the corporation commission's standard of freight rates may be permitted by said commission to adopt the standard rates prescribed by said commission: Provided, that the corporation commission is hereby empowered to reduce the said local rates whenever in its opinion and after investigation by it it shall determine that a lower rate is reasonable: Provided further, that present local rates now established, prescribed or approved by said corporation commission shall not be increased by classification or otherwise.

Any railroad company doing business in the state of North Carolina, or officer or agent thereof, who shall give to any person or shipper any advantage over another person or shipper under like circumstances, by way of any rebate or reduced rate not authorized by law, or by the North Carolina corporation commission, or which shall make charges for shipments of freight in violation of the provisions of this act, or shall wilfully discriminate in the matter of service in favor of one person or corporation against another under like circumstances, shall be guilty of a misdemeanor, and such corporation shall, upon conviction, be fined not less than one hundred dollars, and such officer or agent shall be fined or imprisoned, or both, in the discretion of the court; and any shipper or consignee of any freight in the state of North Carolina who shall knowingly accept any rebate or other consideration or service from any railroad company which is not allowed or given other shippers or consignees under like or similar circumstances, and which is not allowed by law, shall be guilty of a misdemeanor, and fined or imprisoned in the discretion of the court.

Whenever any person, firm or corporation intending to ship freight makes a written application to any railroad company for a car or cars to be loaded in car-load lots with any kind of freight embraced in

the tariffs of said company, stating in said application the character of the freight, the number of cars wanted, the station, depot, siding, wharf or boat-landing on the road or line of said railroad company whence the shipment is to be moved, and its final destination, the railroad company shall furnish the said car or cars within four days from seven o'clock a. m. the day following such application, which said application shall be delivered to the agent of the railroad company at the station at or nearest the point of shipment. Any railroad company failing to furnish the car or cars named in said written application shall be subject to a penalty of five dollars per car per day for each car not furnished, to be recovered by the person, firm or corporation making said application: Provided, that the said railroad company before furnishing the car or cars upon said application of the shipper may require the person, firm or corporation applying for the same to deposit five dollars for each car so demanded at the time of the application is made, which said deposit of five dollars for each car may be retained by the said railroad company as a forfeit for trackage, in case the car or cars are not loaded within forty-eight hours after notice of the placing of said car or cars in accordance with said demand: Provided, that the corporation commission may excuse from the penalties imposed by this section independent lines not owned, operated or controlled by any other line or system when trackage is less than one hundred miles.—Laws 1907, c. 217.

3026. Freight rates posted.—It shall be the duty of all railroad and other transportation companies to keep posted in a conspicuous place in their depots or places where freight is received for shipment a list of its charges for carrying freight, specifying name of place, class of freight and charge for carrying the same. Such charges shall not be increased without giving fifteen days' notice, and the company represented by any agent refusing to comply with this section shall be liable to a penalty of not less than fifty nor more than one hundred dollars.—Rev., 2630.

3027. Penalty for failure to receive.—Agents or other officers of railroads and other transportation companies whose duty it is to receive freights shall receive all articles of the nature and kind received by such company for transportation whenever tendered at a regular depot, station, wharf or boat landing, and every loaded car tendered at a sidetrack, or any warehouse connected with the railroad by a siding, and shall forward the same by the route selected by the person tendering the freight under existing laws; and the transportation company represented by any person refusing to receive such freight shall forfeit and pay to the party aggrieved the sum of fifty dollars for each day said company refuses to receive said shipment of freight, and all damages actually sustained by reason of the refusal to receive freight. If such loaded car be tendered at any siding or workhouse at which there is no agent, notice shall be given to an agent at the nearest regular station at which there is an agent that such car is loaded and ready for shipment.—Rev., 2631.

3028. Failure to transport in reasonable time; reasonable time defined; forfeiture.—It shall be unlawful for any railroad company, steamboat company, express company or other transportation company doing business in this state to omit or neglect to transport within a reasonable time any goods, merchandise or articles of value received by it for shipment and billed to or from any place in the state of North Carolina, unless otherwise agreed upon between the company and the shipper or unless same be burned, stolen or otherwise destroyed, or unless otherwise provided by the North Carolina corporation commission. Each and every company violating any of the provisions of this section shall forfeit to the party aggrieved the sum of fifteen dollars for the first day and two dollars for each succeeding day of such

unlawful detention or neglect where such shipment is made in carload lots, and in less quantities there shall be a forfeiture in like manner of ten dollars for the first day and one dollar for each succeeding day: Provided, the forfeiture shall not be collected for a period exceeding thirty days. In reckoning what is reasonable time for such transportation it shall be considered that such transportation company has transported freight within a reasonable time if it has done so in the ordinary time required for transporting such articles of freight between the receiving and shipping stations; and a delay of two days at the initial point and forty-eight hours at one intermediate point for each hundred miles of distance or fractions thereof over which said freight is to be transported shall not be charged against such transportation company as unreasonable and shall be held to be prima facie reasonable, and a failure to transport within such time shall be held prima facie unreasonable. [Section two thousand six hundred and thirty-two, Revisal of one thousand nine hundred and five of North Carolina, providing a penalty for delay in the transportation of freight, shall not be construed to refer only to delay in starting the freight from the station where it is received, but in addition thereto shall be construed to require the delivery at its destination within the time specified: Provided, however, that if said delay shall be due to causes which could not in the exercise of ordinary care have been foreseen, and which were unavoidable, and upon establishment of these facts to the satisfaction of the justice of the peace or jury trying the cause, the defendant transportation company shall be relieved and discharged from any penalty for delay in the transportation of freight, but it shall not be relieved from the costs of such action. In all actions to recover penalties against a transportation company under section two thousand six hundred and thirty-two, Revisal of one thousand nine hundred and five of North Carolina, the burden of proof shall be upon the transportation company to show where the delay, if any, occurred. This act shall not apply to any causes of action which arose prior to the passage of this act. (Ratified March 8, 1907.)].—Rev., 2632; Laws 1907, c. 401.

3029. Paid at classified rates; penalty for overcharge.—All common carriers doing business in this state shall settle their freight charges according to the rate stipulated in the bill of lading, provided the rate therein stipulated be in conformity with the classifications and rates made and filed with the interstate commerce commission in case of shipments from without the state and with those of the corporation commission of this state in case of shipments wholly within this state, by which classifications and rates all consignees shall in all cases be entitled to settle freight charges with such carriers; and it shall be the duty of such common carriers to inform any consignee or consignees of the correct amount due for freight according to such classification and rates, and upon payment or tender of the amount due on any shipment which has arrived at its destination according to such classification and rates such common carrier shall deliver the freight in question to consignee or consignees, and any failure or refusal to comply with the provisions hereof shall subject such carrier so failing or refusing to a penalty of fifty dollars for each such failure or refusal, to be recovered by any consignee or consignees aggrieved by any suit in any court of competent jurisdiction.—Rev., 2633.

3030. Time within which loss or damage must be paid; penalty; amount of recovery; actions united; remedy cumulative.—Every claim for loss or damage to property while in possession of a common carrier shall be adjusted and paid within sixty days in case of shipments wholly within this state, and within ninety days in case of shipments from without the state, after the filing of such claim with the agent of such carrier at the point of destination of such shipment or point of delivery to another common carrier: Provided, that no such claim shall be

filed until after the arrival of the shipment, or of some part thereof, at the point of destination, or until after the lapse of a reasonable time for the arrival thereof. In every case such common carrier shall be liable for the amount of such loss or damage, together with interest thereon from the date of the filing of the claim therefor until the payment thereof. Failure to adjust and pay such claim within the periods respectively herein prescribed shall subject such common carrier so failing to a penalty of fifty dollars for each and every such failure, to be recovered by any consignee aggrieved in any court of competent jurisdiction: Provided, that unless such consignee recover in such action the full amount claimed, no penalty shall be recovered, but only the actual amount of the loss or damage, with interest as aforesaid. Causes of action for the recovery of the possession of the property shipped, for loss or damage thereto and for the penalties herein provided for may be united in the same complaint.—Rev., 2634.

Note.—The above section was also made applicable to express companies by Laws 1907, c. 983.

3031. Existing remedies continue.—The preceding section shall not deprive any consignee of any rights or remedies now existing against common carriers in regard to freight charges or claims for loss or damage to freight, but shall be deemed and held as creating an additional liability upon said common carrier.—Rev., 2635.

3032. Carrier's right against other carrier.—Any common carrier, upon complying with the provisions of the two preceding sections, shall have all the rights and remedies herein provided for against a common carrier from which it receives the freight in question.—Rev., 2636.

3033. Unclaimed freight sold.—Every railroad, steamboat, express or transportation company which shall have had unclaimed freight, not perishable, in its possession for a period of six months, may proceed to sell the same at public auction, and out of the proceeds may retain the charges of transportation and storage of such freight and the expenses of advertising and sale thereof; but no such sale shall be made until the expiration of four weeks from the first publication of notice of such sale in a state paper and also in a newspaper published at or nearest the place at which such freight was directed to be left, and also at the place where such sale is to take place. The expenses incurred for advertising shall be a lien upon such freight in a ratable proportion according to the value of such article, package or parcel, if more than one.—Rev., 2637.

3034. Unclaimed perishable freight.—In case such unclaimed freight shall in its nature be perishable, then the same may be sold as soon as it can be, on giving the notice required in the preceding section, after its receipt at the place where it was directed to be left.—Rev., 2638.

3035. Funds from unclaimed freight go to University.—Such railroad, steamboat, express or transportation company shall make an entry of the balance of the proceeds of the sale, if any, of each parcel of freight owned by or consigned to the same person, as near as can be ascertained, and at any time within five years thereafter shall refund any surplus so retained to the owner of such freight, his heirs or assigns, on satisfactory proof of such ownership; if no person shall claim such surplus within five years, said surplus shall be paid to the university.—Rev., 2639.

3036. Through freight and travel.—The directors representing the stock held in the various railroad corporations are hereby authorized and empowered to enter into such agreements and terms with each other as to secure through freight and travel without the expense of transfer of freight, or breaking the bulk thereof, at different points along the lines, and for this purpose may use the road or roads of said

corporations or companies, and rolling stock thereof, on such terms as may be agreed upon by the directors of said corporations or companies.—Rev., 2640.

3037. Charges on partial freight deliveries.—Whenever any freight of any kind shall be received by any common carrier in this state to be delivered to any consignee in this state, and a portion of the same shall not have been received at the place of destination, it shall not be lawful for the carrier to demand any part of the charges for freight or transportation due for such portion of the shipment as shall not have reached the place of destination. The carrier shall be required to deliver to the consignee such portion of the consignment as shall have been received upon the payment or tender of the freight charges due upon such portion. But nothing in this section shall be construed as interfering with, or depriving a consignor, or other person having authority, of his rights of stoppage in transitu.—Rev., 2641.

3038. Not to receive more than tariff rate.—No railroad, steamboat, express or other transportation company engaged in the carriage of freight, and no telegraph company or telephone company shall demand collect or receive for any service rendered or to be rendered in the transportation of property or transmission of messages, more than the rates appearing in the printed tariff of such company in force at the time such service is rendered, or more than is allowed by law.—Rev., 2642.

3039. Overcharge on tariff rates refunded.—In case of any overcharge, contrary to the preceding section, the person aggrieved may file with any agent of the company collecting or receiving greater compensation than the amount allowed in the preceding section a written demand, supported by a paid freight bill and an original bill of lading or duplicate thereof for refund of overcharge, and a maximum period of sixty days shall be allowed such company to pay claims filed under this section.—Rev., 2643.

3040. Penalty for failure to refund overcharge.—Any company failing to refund such overcharge within the time allowed, shall forfeit to the party aggrieved the sum of twenty-five dollars for the first day and five dollars per day for each day's delay thereafter until said overcharge is paid, together with all costs incurred by the party aggrieved: Provided, the total forfeiture shall not exceed one hundred dollars.—Rev., 2644.

3041. Live stock killed, negligence presumed.—When any cattle or other live stock shall be killed or injured by the engines or cars running upon any railroad, it shall be prima facie evidence of negligence on the part of the company in any action for damages against such company: Provided, no person shall be allowed the benefit of this section unless he shall bring his action within six months after his cause of action shall have accrued.—Rev., 2645.

3042. Injuries by negligence of fellow-servants; defective machinery.—Any servant or employee of any railroad company operating in this state who shall suffer injury to his person, or the personal representative of any such servant or employee who shall have suffered death in the course of his services or employment with such company by the negligence, carelessness or incompetence of any other servant, employee or agent of the company, or by any defect in the machinery, ways or appliances of the company, shall be entitled to maintain an action against such company. Any contract or agreement, expressed or implied, made by any employee of such company to waive the benefit of this section shall be null and void.—Rev., 2646.

3043. How action brought for penalties.—All penalties imposed by this chapter may, unless otherwise provided, be sued for in the name of the state.—Rev., 2647.

3044. Officials to account to successors.—The president and directors of the several railroads, and all persons acting under them, are hereby required upon demand to account with the president and directors elected or appointed to succeed them, and shall transfer to them forthwith all the money, books, papers, choses in action, property and effects of every kind and description belonging to such company.—Rev., 2648.

3045. Vestibule fronts on street railway cars.—All street passenger railway companies shall use vestibule fronts, of frontage not less than four feet, on all passenger cars run by them on their lines during the latter half of the month of November and during the months of December, January, February and March of each year: Provided, that such companies shall not be required to close the sides of the vestibules: Provided further, such companies may use cars without vestibule fronts in cases of temporary emergency in suitable weather, not to exceed four days in any one month within the period herein prescribed for use of vestibule fronts. The corporation commission is hereby authorized to make exemptions from the provisions of this section in such cases as in their judgment the enforcement of this section is unnecessary.—Rev., 2615.

3046. Street railways to have fenders in front of passenger cars.—All street passenger railway companies shall use practical fenders in front of all passenger cars run by them. The corporation commission is hereby authorized to make exemptions from the provision of this section in such cases as in their judgment the enforcement of this section is unnecessary.—Rev., 2616.

3047. Operation of street railways regulated.—Section 1. That all street, inter-urban and suburban railway companies, engaged as common carriers, in the transportation of passengers for hire in the state of North Carolina, shall provide and set apart so much of the front portion of each car operated by them as shall be necessary, for occupation by the white passengers therein, and shall likewise provide and set apart so much of the rear part of said car as shall be necessary, for occupation by the colored passengers therein, and shall require as far as practicable the white and colored passengers to each occupy the respective parts of such car so set apart for them, as specified in section two of this act.

Sec. 2. That any white person entering a street car for the purpose of becoming a passenger thereon shall, if necessary to carry out the purposes of this act, occupy the first vacant seat or unoccupied space in the aisle nearest the front of said car, and any colored person entering said car for a like purpose shall occupy the first vacant seat or unoccupied space in the aisle nearest the rear end of said car: Provided, however, no contiguous seats on the same bench shall be occupied by white and colored passengers at the same time (unless or until all of the other seats in said car shall be occupied).

Sec. 3. That it shall be unlawful for any passenger to expectorate upon the floor or any other part of any street car, or to use, while thereon, any loud, profane or indecent language, or to make any insulting or disparaging remark to or about any other passenger or person thereon within his or her hearing; and it shall likewise be unlawful for any passenger to wilfully stand upon the front platform, fender, bumper, running-board, or steps of such car while the same is in motion, whether such passenger has or has not paid the usual fare for riding on such car.

Sec. 4. That any passenger who shall ride upon the rear platform of any street car in motion, when there is room for such passenger to either sit or stand inside the car, shall be deemed to have assumed all the risks of being injured while so riding, as the result of any act of the street car company: Provided, said company shall make it appear that such passenger would not have been injured had he been on the

inside of said car: Provided further, that before any street, inter-urban or suburban railway shall be allowed to invoke the provisions of this section it shall have copies of this act printed and framed and one copy hung in each end of all cars operated on its lines, and shall further have a placard hung in a conspicuous place on the rear of such cars, which shall read as follows: "Passengers are warned not to ride on this platform," and a placard hung on each side of open cars in a conspicuous place which shall read as follows: "Passengers are warned not to ride on the running-board."

Sec. 5. That any officer, agent or other employee of any street railway company who shall wilfully violate the provisions of section one of this act shall be guilty of a misdemeanor, and upon conviction fined or imprisoned in the discretion of the court.

Sec. 6. Any person wilfully violating any of the provisions of sections two and three of this act shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not exceeding thirty days, and may also be ejected from said car by the conductor and other agent or agents charged with the operation of said car, who are hereby invested with police powers to carry out the provisions of this act.

Sec. 7. The provisions of this act shall not apply to colored nurses of white children, while in attendance upon such children then in their charge, or a colored attendant in charge of a sick or infirm white person.

Sec. 8. That no street, suburban or inter-urban railway company, its agents, servants or employees, shall be liable to any person on account of any mistake in the designation of any passenger to a seat or part of such car set apart for passengers of the other race.

Sec. 9. This act shall be in force from and after the first day of April, one thousand nine hundred and seven.—Laws 1907, c. 850.

CHAPTER LVII.

REGISTER OF DEEDS.

1. Office of.

3048. Seal of office.—The office of register of deeds for every county in the state shall have and use an official seal, which seal shall be provided by the county commissioners of the several counties, and shall be of the same size and design as the seals now used by the clerk of the superior court, with the words "Office of Register of Deeds," the name of the county and the letters "North Carolina" surrounding the figures.—Rev., 2649.

3049. Election for.—In each county there shall be elected biennially by the qualified voters thereof, as provided for the election of members of the general assembly, * * * a register of deeds.—Rev., 2650.

3050. Vacancy filled by commissioners.—When a vacancy occurs from any cause in the office of register of deeds, the board of county commissioners shall fill such vacancy by the appointment of a successor for the unexpired term, who shall qualify and give bond as required by law.—Rev., 2651.

Note.—See also s. 1321 of Revisal.

3051. Oath of office.—The register of deeds shall take the oath of office on the first Monday of December next after his election before the board of county commissioners.—Rev., 2652.

3052. Where kept.—The register shall keep his office at the courthouse unless the board of county commissioners shall deem it impracticable.—Rev., 2653.

3053. When open.—The board of county commissioners may fix by order, to be entered on their records, what days of each week, and at what hours of each day, the register of deeds shall attend at his office in person or by deputy, and he shall give his attendance accordingly.—Rev., 2654.

2. Duties of.

3054. Call on clerk for instruments.—The register of deeds shall at least once a week apply to the clerk of the superior court of his county for all instruments of writing admitted to probate, and then remaining in the office of such clerk for registration, and also for all fees for registration due thereon; which fees the clerk of the superior court shall receive for the register.—Rev., 2655.

3055. Proceed against clerk for failure to deliver papers.—In case the clerk fails to deliver such instruments of writing, and pay over such fees as are prescribed in the preceding section, on application of the register, the clerk shall forfeit and pay to the register one hundred dollars for every such failure; for which sum judgment may be entered at any time by the judge of the superior court, on motion in behalf of the register, on a notice of ten days thereof to the clerk.—Rev., 2656.

3056. Certify and register copies.—When a deed, mortgage or other conveyance conveying real estate situate in two or more counties is presented for registration duly probated and a copy thereof is presented with the same, the register shall compare the copy with the original, and if it be a true copy thereof he shall certify the same, and thereupon the register shall endorse the original deed or conveyance as duly registered in his county, designating the book in which the same is registered and deliver the original deed to the party entitled thereto and register the same from the certified copy thereof to be retained by him for that purpose.—Rev., 2657.

3057. To register instruments within what time.—The register of deeds shall register all instruments in writing delivered to him for registration within twenty days after such delivery, except mortgages and deeds of trust, or other instruments made to secure the payment of money, which he shall register forthwith after delivery to him. He shall indorse on each deed in trust and mortgage the day on which it is presented to him for registration, and such indorsement shall be entered on his books and form a part of the registration, and he shall register such deeds in trust and mortgages in the order of time in which they are presented to him.—Rev., 2658.

3058. Bond liable for failure to register.—In case of his failure to register any deed or other instrument within the time and in the manner required by the preceding section, the register shall be liable, in an action on his official bond, to the party injured by such delay.—Rev., 2659.

3059. To file papers alphabetically.—The register shall keep in files alphabetically labeled all original instruments delivered to him for registration, and on application for such originals by any person entitled to their custody, he shall deliver the same.—Rev., 2660.

3060. Transcribe and index books on order.—The board of county commissioners, when they deem it necessary, may direct the register of deeds to transcribe and index such of the books in the register's office as from decay or other cause may require to be transcribed and indexed. They may allow him such compensation at the expense of the county for this work as they think just. The books when so transcribed and approved by the board shall be public records as the

original books, and copies therefrom may be certified accordingly.—Rev., 2661.

3061. Number of survey grants registered.—The register of deeds in each county in this state, when grants have been registered without the number of the tract or survey, shall place in the registration of the grants the number of the tract or survey, when the same shall be furnished him by the grantee or other person; and in registering any grant he shall register the number of the tract or survey.—Rev., 2662.

Note.—For requirement to register surveys, see s. 1722 et seq. of Revisal.

3062. Certificate of survey to be registered.—It shall be the duty of the register of deeds in each county, when any grant is presented for registration with a certificate of survey attached, to register such certificate of survey, together with all endorsements thereon, together with said grant, and a record of any certificate of survey so made shall be read in evidence in any action or proceeding: Provided, the failure to register such certificate of survey shall not invalidate the registration of the grant.—Rev., 2663.

3063. Keep general index.—The board of county commissioners, at the expense of the county, shall cause to be made and consolidated into one book, a general index of all the deeds and other documents in the register's office, and the register shall afterwards keep up such index without any additional compensation.—Rev., 2664.

3064. Index instruments.—The register of deeds shall provide and keep in his office full and complete alphabetical indexes of the names of the parties to all liens, grants, deeds, mortgages, bonds and other instruments of writing required or authorized to be registered; such indexes to be kept in well-bound books, and shall state in full the names of all the parties, whether grantors, grantees, vendors, vendees, obligors or obligees, and shall be indexed and cross-indexed, within twenty-four hours after registering any instrument, so as to show the name of each party under the appropriate letter of the alphabet; and reference shall be made, opposite each name, to the page, title or number of the book in which is registered any instrument.—Rev., 2665.

The failure of a register of deeds to properly index a registry of a mortgage renders him liable on his official bond, to one injured by such neglect.—*Daniel v. Grizzard*, 117—105.

3065. Clerk to board of commissioners.—The register of deeds is ex officio clerk of the board of county commissioners, and as such shall perform the duties imposed by law or by order of the said board.—Rev., 2666.

Note.—For duty in regard to official reports, see s. 919 of Revisal.

For general duty as clerk of board, see ss. 1324-1326 of Revisal.

3066. Serve certain notices by mail.—The register of deeds shall serve by mail all notices issued by the board of county commissioners to justices of the peace, road overseers and school committeemen, in lieu of the service by the sheriff, and shall receive as his compensation his actual expenses for mailing, and nothing more.—Rev., 2667.

3067. Make out tax lists.—The register shall make out the tax lists as directed by law, under the supervision of the board of county commissioners.—Rev., 2668.

3068. Omitted duties, how performed.—Whenever, upon the termination for any cause of the term of office of the register of deeds, it appears that he has failed to perform any of the duties of his office, the board of commissioners shall cause the same to be performed by another person or the successor of any such defaulting register. Such person or successor shall receive for his compensation the fees allowed for such services, and if any portion of the compensation has been paid to such defaulting register, the same may be recovered by the

board of county commissioners by suit on his official bond, for the benefit of the county or person injured thereby.—Rev., 2669.

Note.—Failure to perform duty a misdemeanor, see ss. 3592 and 3599 of Revisal.

Failure to keep index a misdemeanor, see s. 3600 of Revisal.

Entry-taker ex officio, see s. 1701 of Revisal.

County ranger ex officio, see Strays.

For duties in regard to marriage license, see chapter on Marriage.

For duty in regard to mortgage given by clerk of superior court in lieu of bond, see Bonds.

Constables' and coroner's bonds registered by, see Bonds.

For duty to record appointments of deputy clerks, see s. 899 of Revisal.

For registration of report establishing dividing fences, see s. 1668 of Revisal.

For registration of timber trademarks, see s. 3024 of Revisal.

For duty as to official reports, see s. 919 of Revisal.

CHAPTER LVIII.

RELIGIOUS SOCIETIES.

3069. May appoint trustees.—The conference, synod, convention or other ecclesiastical body, representing any church or religious denomination within the state, as also the religious societies and congregations within the state, may from time to time and at any time, appoint in such manner as such body, society or congregation may deem proper, a suitable number of persons as trustees for such church denomination, religious society or congregation, who and their successors shall have power to receive donations, and to purchase, take and hold property, real and personal, in trust for such church or denomination, religious society or congregation.—Rev., 2670.

3070. May remove trustees.—The body appointing may remove such trustees or any of them, and fill all vacancies caused by death or otherwise; and the said trustees and their successors may sue and be sued in all proper actions, for or on account of the donations and property so held or claimed by them, and for and on account of any matter relating thereto. And they shall be accountable to the said churches, denominations, societies and congregations for the use and management of said property, and shall surrender it to any person authorized to demand it.—Rev., 2671.

3071. Title to lands to vest in trustees, or in societies.—All glebes, lands and tenements, heretofore purchased, given or devised for the support of any particular ministry, or mode of worship, and all churches and other houses built for the purpose of public worship, and all lands and donations of any kind of property or estate that have been or may be given, granted or devised to any church or religious denomination, religious society or congregation within the state for their respective use, shall be and remain forever to the use and occupancy of that church or denomination, society or congregation, for which said glebes, lands, tenements, property and estate were so purchased, given, granted or devised, or for which the said churches, chapels or other houses of public worship were built; and the estate therein shall be deemed and held to be absolutely vested, as between the parties thereto, in the trustees respectively of the said churches, denominations, societies and congregations, for their several use, according to the intent expressed in the conveyance, gift, grant or will; and in case there shall be no trustees, then in the said churches, denominations, societies and congregations, respectively, according to such intent.—Rev., 2672.

3072. How to convey land.—The trustees of any religious body may mortgage or sell and convey in fee simple any land owned by such body, when directed so to do by such church, congregation, society or

denomination, or its committee, board or body having charge of its finances, and all such conveyances so made or heretofore made, or hereafter to be made, shall be effective to pass said land in fee simple to the purchaser or to the mortgagee for the purposes in such conveyances or mortgage expressed; and they may sell or mortgage its personal property.—Rev., 2673.

3073. House on vacant land vests title.—All houses and edifices erected for public religious worship on vacant lands, or on lands of the state not for other purposes intended or appropriated, together with two acres adjoining the same, shall hereafter be held and kept sacred for divine worship, to and for the use of the society by which the same was originally established.—Rev., 2674.

CHAPTER LIX.

RESTORATION TO CITIZENSHIP.

3074. Petition for.—Any person convicted of an infamous crime, whereby the rights of citizenship are forfeited, desiring to be restored to the same, shall file his petition in the superior court, setting forth his conviction and the punishment inflicted, his place or places of residence, his occupation since his conviction, the meritorious causes which, in his opinion, entitle him to be restored to his forfeited rights, and that he has not before been restored to the lost rights of citizenship.—Rev., 2675.

3075. When and where petition for filed.—At any time after the expiration of four years from the date of conviction, the petition may be filed in the superior court of the county in which the applicant is at the time of filing and has been for five years next preceding a bona fide resident, or in the superior court of the county, at term, where the indictment was found upon which the conviction took place; and in case the petitioner may have been convicted of an infamous crime more than once, and indictments for the same may have been found in different counties, the petition shall be filed in the superior court of that county where the last indictment was found.—Rev., 2676.

3076. Notice given.—Upon filing the petition the clerk of the court shall advertise the substance thereof, at the court-house door of his county, for the space of three months next before the term when the petitioner proposes that the same shall be heard.—Rev., 2677.

3077. Hearing and evidence.—The petition shall be heard by the judge at term, at which hearing the court shall examine all proper testimony which may be offered, either by the petitioner as to the facts set forth in his petition, or by any one who may oppose the grant of his prayer. The petitioner shall also prove by five respectable witnesses, who have been acquainted with the petitioner's character for three years next preceding the filing of his petition, that his character for truth and honesty during that time have been good; but no deposition shall be admissible for this purpose unless the petitioner has resided out of this state for three years next preceding the filing of the petition.—Rev., 2678.

3078. Decree.—At the hearing the court, on being satisfied of the truth of the facts set forth in the petition, and on its being proved that the character of the applicant for truth and honesty is good, shall decree his restoration to the lost rights of citizenship, and the petitioner shall accordingly be restored thereto.—Rev., 2679.

3079. Pardon, or suspension of judgment; procedure after.—Any person convicted of any crime, whereby the rights of citizenship are

forfeited, and the judgment of the court pronounced does not include imprisonment anywhere, and pardon has been granted by the governor, or the court suspended judgment on payment of the costs and the costs have been paid, such person may be restored to such forfeited rights of citizenship upon application, by petition, to the judge presiding at any term of the superior court held for the county in which the conviction was had, one year after such conviction. The petition shall set out the nature of the crime committed, the time of conviction, the judgment of the court, and that pardon has been granted by the governor, and also that said crime was committed without felonious intent, and shall be verified by the oath of the applicant and accompanied by the affidavits of ten reputable citizens of the county, who shall state that they are well acquainted with the applicant and that in their opinion the crime was committed without felonious intent. No notice of the petition in such case shall be necessary, and no advertisement thereof be made, but the same shall be heard by the judge, upon its presentation, during a term of court; and if he is satisfied as to the truth of the matters set out in the petition and affidavits, he shall decree the applicant's restoration to the lost rights of citizenship, and the clerk shall spread the decree upon his minute docket: Provided, that in all cases where the court suspended judgment it shall not be necessary to allege or prove that pardon has been granted by the governor and in such cases the petition may be made and the forfeited rights of citizenship restored at any time after conviction.—Rev., 2680.

CHAPTER LX.

ROADS, BRIDGES, FERRIES.

1. Described.

3080. What constitutes; board of supervisors.—All roads and ferries that have been laid out or appointed by virtue of any act of assembly, or any order of court, are hereby declared to be public roads and ferries; and the justices of the peace in each township shall have the supervision and control of the public roads in their respective townships. They shall, with respect to this work, constitute and be styled the board of supervisors of public roads of such township, and under that name, for the purposes aforesaid, they are hereby incorporated the board of supervisors of public roads, and the board of county commissioners, as hereafter in this chapter set forth, shall have full power and authority within their respective counties to appoint and settle ferries, to order the laying out of public roads where necessary, to appoint where bridges shall be made, to discontinue such roads and ferries as shall be found useless, and to alter roads so as to make them more useful.—Rev., 2681.

The Code, sections 2014 and 2024, imposes upon the justices of the peace, as supervisors of roads in their respective townships, the duty of dividing the roads into sections, appointing overseers, allotting hands to the overseer, etc., but does not require them to put and keep the public roads in order, it being the duty of the overseer to superintend the hands and put and keep the roads in order.—State v. Britt, 118—1255.

3081. Width.—All roads, except such as are causewayed or through cuts, shall be not less than eighteen feet wide, clear of trees, logs and other obstructions to the passage of ordinary vehicles, and they shall be ten feet in width in the centre of the roadway clear of stumps and runners. Where, by the overseers, it may be deemed expedient to make or repair causeways on the same, they shall be at least fourteen feet wide; and earth, necessary to raise or cover them, shall be taken from either hand, so as to form a drain on each side of the causeway; and

they shall make, of the same width, necessary bridges through swamps and over small streams of water: Provided, this section shall not apply to the roads in those counties where there is by law a classification of the widths of the roads.—Rev., 2682.

2. Established.

3082. By whom; jurors; appeal.—The board of supervisors shall have the right to lay out and discontinue cartways, and the board of commissioners of the county only shall have the right to lay out and establish and discontinue public roads: Provided, that in laying out and establishing roads and cartways, and for the purpose of assessing damage to property by reason of the same, no greater number of jurors than five shall be summoned or be required: Provided further, that either party may appeal from the decision of the board of supervisors to the board of commissioners of the county.—Rev., 2683.

3083. Petition; notice given.—The board of county commissioners shall not establish any ferry, or order the laying out of any public road, or discontinue or alter such road or ferry, unless upon petition in writing. And unless it appear to the board that every person, over whose lands the said road may pass, or whose ferry shall be within two miles of the place at which another ferry is prayed to be established, shall have had twenty days' notice of the intention to file such petition, the same shall be filed in the office of the clerk of the board until the succeeding meeting of the board, and notice thereof be posted during the same period at the courthouse door; at which meeting the board shall hear the allegations set forth in the petition, and if sufficient reason be shown, the board shall appoint and settle or discontinue the said ferry, or order the laying out, or discontinue or alter the said road, as the case may be.—Rev., 2684.

3084. How laid out.—All public roads shall be laid out by a jury of three freeholders, who shall be summoned by the sheriff to meet at one of the termini of the proposed road, and, being duly sworn by the sheriff or other person authorized to administer oaths, shall lay out said road to the greatest advantage of the inhabitants, and with as little prejudice as may be to lands and enclosures; which laying out and such damage as private persons may sustain, shall be done and ascertained, by the same jury on oath; and all damages by them assessed shall be deemed a county charge.—Rev., 2685.

3085. Cartways, tramways, established.—If any person be settled upon or cultivating any land, or shall own any standing timber to which there is leading no public road, or which is not convenient to water, and it shall appear necessary, reasonable and just that such person should have a private way to a public road or watercourse or railroad over the lands of other persons, he may file his petition before the board of supervisors of the township praying for a cartway, tram or railway to be kept open across such other persons' lands, leading to some public road, ferry, bridge, public landing or watercourse or railroad; and upon his making it appear to the board that the adverse party has had ten days' notice of his intention, the board shall hear the allegations of the petitioner and the objections of the adverse party or parties, and if sufficient reason be shown, shall order the constable to summon a jury of five freeholders, to view the premises, and lay off a cartway, tram or railway, not less than fourteen feet wide, and assess the damages the owner of such land may sustain thereby; which, with the expense of making the way, shall be paid by the petitioner; and the cartways established under this section shall be kept open for the free passage of all persons on foot or horseback, and all carts and wagons: Provided, that if the notice aforesaid shall not have been given, the board shall cause such petition to be filed with their chair-

man until their next meeting, when they shall proceed to hear and determine the same, and the petitioner or the adverse party may appeal from the order of the supervisors to the board of commissioners of the county, and from the order of the board of commissioners to the superior court at term, when the issues of fact shall be tried by a jury, and from the judgment of the superior court to the supreme court, as in other cases of appeal.—Rev., 2686.

3086. Church roads established.—The board of supervisors in each township is authorized to order the laying out of any and all necessary roads to and from any church or other place of public worship in their said townships, to discontinue such roads when they may be found useless, and to alter the same so as to make them more useful, and the right of way herein provided for shall terminate whenever the church or place of worship shall cease to be used as such.—Rev., 2687.

3087. Petition for church road; procedure.—The said board of supervisors shall not order the laying out of any such road or discontinue or alter the same except upon petition, in writing, nor shall they hear any such petition, unless it may be made to appear that every person over whose lands the said road may pass shall have had ten days' notice of the intention to file such petition, by personal service of notice in writing, or if the owner be unknown or there be no owner, agent or attorney of such owner resident in this state, then by notice thereof posted up at the courthouse door of the county in which the township is situate and at two public places in the township for the space of ten days; and upon the hearing of the petition, if sufficient reason be shown, the said board of supervisors shall order the laying out, discontinue or alter the said road as the case may be, and from their determination any party dissatisfied may appeal as is provided in this chapter in the section directing the laying off of cartways.—Rev., 2688.

3088. Manner of laying out.—All roads provided for in the two preceding sections shall be laid out to the greatest advantage of the inhabitants and with as little prejudice as may be to lands and enclosures, within twenty days from the notification of their appointment by three disinterested freeholders, to be appointed by the said board of supervisors; and such damage as any individuals may sustain shall be ascertained by the said freeholders, and a report thereof with the proceedings had by them shall be made to the said board of supervisors; and all damages so assessed by the freeholders shall be paid by the petitioners, and until paid there shall be no confirmation of the report of the freeholders, and such laying out shall be of no effect.—Rev., 2689.

3089. Appeal; bond; trial de novo.—Any person may appeal to the superior court at term time from the determination of the board of county commissioners, and if any such person shall appeal from the board on a petition, he shall give bond to the opposing party as provided in other cases of appeal, and the superior court at term shall hear the whole matter anew; and where any proceeding is instituted to lay out, establish, alter or discontinue public roads or to appoint and settle ferries, and the said proceeding is carried to the superior court in term time by appeal or otherwise, the parties to said proceeding shall be entitled to have every issue of fact joined in said proceeding tried in the superior court in term time by jury, and from the judgment of the superior court either party may appeal to the supreme court as is provided by law for other appeals.—Rev., 2690.

3090. Public ferry sites condemned.—Wherever a public ferry has been or may hereafter be established, the board of county commissioners of the county in which such ferry is or may be located shall

have power to condemn land, not exceeding one acre for each public ferry, adjacent or convenient to said ferry, upon which to erect necessary buildings for the use and convenience of ferrymen and the traveling public, under the same rules and regulations as are provided by law for condemning land for public roads; and upon the payment or offer of payment, to the owner of said land, of the amount awarded to him therefor, title to the same shall vest in the county in which the said land is situate. Nothing in this section shall be construed to deprive the owner of land so condemned of the right of appeal to the superior court.—Rev., 2691.

3. Changed or Discontinued.

3091. On petition.—Whenever, upon petition of any person, a road shall be changed and, as a condition thereof, it shall be required by the board that he put the proposed road in good condition, he may, at any time thereafter, tender the same to the overseer, who shall receive it, if it be in such condition as is required for highways; and if not, he shall reject it; and in either case he shall report and certify the fact to said board where the same may be considered; and said board shall hear all persons interested in the matter of receiving or rejecting the road; and the decision of the board shall be conclusive as to the condition of the road; but the old road shall not be closed until it be discontinued by order of the board.—Rev., 2692.

3092. By land owner.—In addition to the mode prescribed in the preceding section for turning roads, the following method may be observed by any one who desires to change a road from one part of his land to another, namely: Such person shall lay out the same, and after putting it in such good condition as highways are directed to be, shall apply to a justice of the peace, who thereupon shall notify the overseer of the road, and summon two freeholders to meet on the premises at a given day; and the said freeholders, being duly sworn, shall, with the justice, view and examine carefully the road which is proposed in place of the other, and all matters and facts tending to show whether the change should be allowed. They shall report, in writing subscribed by them, the result of their consideration to the next meeting of the board of supervisors, which may confirm or reject their report: Provided, that such justice and freeholders shall be disinterested in the land, and not of kin or affinity to the applicant.—Rev., 2693.

3093. Cartways, tramways, railways; gates.—Cartways, tramways or railways laid off according to the provisions of this chapter, may be changed or discontinued upon application by any person concerned, under the same rules of proceeding as they may be first laid off, and upon such terms as to the board of supervisors shall seem equitable and just. Cartways, tramways or railways for the removal of timber, shall continue for a period not longer than five years, and in entering cultivated land, shall protect the same by sufficient stockguards. And any person through whose land a cartway may pass may erect gates across the same, which shall be kept in good repair.—Rev., 2694.

4. Bridges.

3094. Where footways and hollow bridges maintained.—Every overseer of the road, when the township board of supervisors may so direct, shall cause to be made and kept in repair, for the convenience of travelers on foot, good and sufficient footways over all swamps and streams of water that may cross that part of the road allotted to him; and, when the board shall so direct, shall also erect and keep hand-rails on each side of all hollow bridges situate on such part of the road: Provided, that at all places where footways and hand-rails, at hollow bridges or over swamps and streams of water, shall have been

commonly used, for the space of ten years next preceding any period within three years before presentment made or indictment found for want of such footways or hand-rails, the same shall be conclusive evidence of an order theretofore made by the board, that they shall erect and keep up, subject to be rebutted only by producing an order dispensing with them made within three years next before such presentment.—Rev., 2695.

3095. How made and maintained; when connecting two counties; liability of county commissioners.—When a bridge shall be necessary, and the overseer with his assistants can not conveniently make it, the board of county commissioners shall contract for the building, keeping and repairing thereof, and the same shall be a charge on the county; and when bridges shall be necessary over any stream which divides one county from another, the commissioners of each shall join in agreement for building, keeping and repairing the same, provided the cost of the same does not exceed five hundred dollars; and the charge thereof shall be defrayed by both counties, in proportion to the number of taxable polls in each, unless otherwise agreed upon by and between the commissioners of the respective counties, and bridges shall be deemed necessary, as provided for in this section, in all cases where public roads have been regularly laid off in each county according to law to the banks of any stream which divides one county from another, if there be no ford across said stream, so long as said road shall continue to be a public ferry road; and if the commissioners of each county shall not provide their proportionate part of the money necessary for keeping up and repairing the bridges across such stream, then each of said commissioners shall be liable to a penalty of fifty dollars, to be sued for by any taxpayer of the county, one-half of said penalty to go to the party suing for the same and the other half to the school fund of the county.—Rev., 2696; Laws 1907, c. 185.

3096. Person constructing ditch across public road to maintain.—It shall be the duty of every owner of a water-mill, which is situate on any public road, and also of every person who, for the purpose of draining his lands, or for any other purpose, shall construct any ditch, drain or canal across a public road, respectively, to keep at his own expense in good and sufficient repair, all bridges that are or may be erected or attached to his milldam, immediately over which a public road may run; and also to erect and keep in repair all necessary bridges over such ditch, drain or canal on the highway, so long as they may be needed by reason of the continuance of said mill, or milldam, ditch, drain or canal. Nothing herein shall be construed to extend to any mill which was erected before the laying off of such road, unless the road was laid off by the request of the owner of the mill. The duty hereby imposed on the owner of the mill, and on the person cutting the drain or canal, shall continue on all subsequent owners of the mill, or other property, for the benefit of which the said ditch, drain or canal was cut. When any ditch or drain originally constructed across any public road, and bridged for the convenience and safety of the traveling public, has been or may hereafter be enlarged by the owner of adjacent lands to drain his lands, it shall be the duty of such owner to keep up and in repair all bridges crossing such ditch, drain or canal, and such charge shall be imposed upon all subsequent owners of the lands so drained. Any person throwing a bank of dirt in the main road shall be compelled to spread the same. When any ditch or drain is cut in such way as to turn water into any public road the person cutting such ditch or drain shall be compelled to cut such other ditch or drain as may be necessary to take the water from said road.—Rev., 2697.

3097. When county to erect draws.—The county or counties which may erect bridges shall, by their boards of commissioners, provide and

keep up draws in all such bridges, where the same may be necessary to allow the convenient passage of vessels. When any such draw shall be necessary to be erected for the passage of timber-rafts, said draw may not exceed twenty feet in width.—Rev., 2698.

3098. When owner of, to put in draw.—Owners of steamboats or other craft, who may intend to navigate any river or creek over which any person may have a bridge, may give three months' notice thereof in one of the public journals of the state, published nearest the river or creek intended to be navigated, and to the owner of said bridge, to construct a draw of sufficient width to allow the passage of the boat which is to be used; and if the owner of said bridge shall not, within three months from the date of the notice, construct the required draw, he shall forfeit and pay the person so notifying, if he be thereby prevented from navigating the watercourse, fifty dollars; and shall be further subject to the like penalty, under like circumstances, for every three months' default thereafter.—Rev., 2699.

3099. Railroads keep up, when.—Railroad, plankroad and turnpike companies, each, shall keep up, at their own expense, all bridges on or over county, or incorporated roads, which they have severally made it necessary to be built, in establishing their respective roads; and on failure to do so, shall forfeit and pay twenty-five dollars to any person who may sue for the same.—Rev., 2700.

Note.—See also s. 2568 et seq. of Revisal.

3100. Railroads keep up draws, when.—Railroad, plankroad and turnpike companies, erecting bridges across watercourses, shall attach and keep up good and sufficient draws, by which vessels may be allowed conveniently to pass.—Rev., 2701.

3101. County orders for, valid.—Every contract and order by the board of county commissioners entered into or made as authorized by this chapter for or concerning the building, keeping up or repairing bridges, in such manner as to them may seem most proper, shall be valid against the county.—Rev., 2702.

3102. Penalty for neglect to repair.—Every person who shall fail to perform the duties imposed upon him by this chapter, or shall leave out of repair any such bridge, for the space of ten days, unless prevented by unavoidable circumstances, shall be liable for such damages as may be sustained.—Rev., 2703.

3103. How expense of maintaining borne.—The expense of building and keeping up public bridges in the several counties shall be borne by the whole people of each, and not by the people of the township separately, in which such bridges may be situated; and it shall be the duty of the commissioners to adjust this burden equally among the people of their respective counties, and they shall exercise a due supervision over the action of the respective boards of supervisors of the townships, so as to prevent the board of any township from establishing any unnecessary number of bridges in its respective township.—Rev., 2704.

3104. Solicitor to prosecute for injury to bridges.—The solicitors of the superior court are authorized and directed to institute suits in the name of the state, in the counties wherein the injuries may be done, for the recovery of damages, against all persons who shall wilfully or negligently injure any public bridge belonging to or situate in any county or counties, by forcibly running any decked vessel, boat or raft against the same; by cutting trees or timber in the rivers or creeks above such bridges, or by any other manner or means whatsoever. In case the injury is done to two counties, the action may be brought in either for the entire damage; and the damages which may be recovered shall be for the use of the county or counties in-

jured; and if the plaintiff fail, the costs shall be paid by the county or counties for whose use the suit is brought, and in the same proportion in which the recovery would be divided.—Rev., 2705.

5. Toll Bridges.

3105. When commissioners may establish.—Whenever, from the rapidity or width of any stream, it may be too burdensome to build and keep up a bridge across the same, at the expense of those who are taxable for that purpose, the board of commissioners of the county, or counties, chargeable therewith, may jointly and severally (as the case may be) contract for the building thereof, by allowing the builder to take tolls, at such rate and for such time, on all persons, horses, carriages and other things passing over the bridge, as may be agreed on between the board of commissioners and the builder; which tolls shall be common to all persons. And such bridges shall be built in the manner the board or boards may direct, and shall be kept in good repair by the builder, his heirs and assigns, during the time the tolls are to be enjoyed.—Rev., 2706.

3106. Commissioners may regulate tolls.—The board of commissioners of each county shall, once a year, or oftener if necessary, at the meeting to be held next after the first day of January, rate the prices of such ferries as shall be kept within their respective counties; (and ferries lying between two counties shall be rated at a joint meeting of the commissioners of the two counties, to be held at such time and place as may be agreed upon by the commissioners of the two counties. This act shall not apply to Onslow, Mecklenburg, Halifax, Northampton, Pasquotank, Surry, Camden, Catawba, Iredell, Lincoln and Gaston counties;) and any ferry keeper who shall ask, demand or receive a greater price for ferriage than shall be rated by the board of commissioners, shall forfeit and pay five dollars for every offense to the party aggrieved. And every person who owns a public ferry, and refuses to keep it up at the rates allowed by the board, shall for every such offense forfeit five dollars.—Rev., 2707; Laws 1907, c. 221.

3107. Owner of ferry may build.—In all cases, where the proprietor of a ferry shall prefer building a good and substantial bridge over any watercourse instead of keeping a ferry, he may do so; and may claim and hold such bridge under the same rights, and in the same manner, by which the ferry is claimed and held, and under the same rules, regulations, restrictions and penalties as other toll-bridges: Provided, that no more toll shall be demanded for passing any such bridge than is granted by law for the ferriage, unless by agreement with the board of commissioners: Provided, further, that in all such bridges the proprietor shall erect a draw, where the free navigation of the stream may require it.—Rev., 2708.

3108. Owner of, and ferries to give bond.—The board of commissioners of each county shall compel every person that may own a toll-bridge, or keep a public ferry, within the county, to give bond with good surety in the sum of one thousand dollars, payable to the State of North Carolina, conditioned that he will constantly keep such bridge in good repair, or, as the case may be, provide and keep good and sufficient boats, or other proper craft, always to be well attended, for the passing of travelers or other persons, their horses, carriages and effects; and will indemnify and save harmless every person who may be endangered, by reason of any default in his undertaking. And if any person shall receive damage, because such ferryman or keeper of a toll-bridge shall not have complied with the conditions of his bond, he may bring suit thereon in the name of the state, and recover his damages. And if any person shall be detained at any public ferry by reason of the ferryman not having sufficient boats or other proper

crafts and hands, or by his neglecting to do his duty in any other respect, he may recover before a justice of the peace, against such ferryman, the sum of ten dollars, as a penalty for every such default or neglect.—Rev., 2709.

3109. Penalty on unauthorized ferry.—If any unauthorized person shall pretend to keep a ferry or to transport for pay any person or his effects, within five miles of any ferry on the same river or water, which theretofore may have been appointed, he shall forfeit and pay two dollars for every such offense, to the nearest ferryman: Provided, that any person who may contract for carrying the mail, may keep a boat for the sole purpose of transporting the same, and such passengers as may travel in the coach therewith, across any ferry; but such contractor shall not transport across such ferry any other passengers than such as travel by the coach.—Rev., 2710.

6. Gates Across.

3110. Permission for erection.—Any person desiring to erect a gate across a public road may file his petition before the board of supervisors of the township where the road lies; whereupon publication shall be made at the courthouse and on the lands of the person so applying and at three public places in said township until the next succeeding meeting, of such application, specifying the road, the place for the gate and name of the petitioner; and all persons interested in the convenient traveling or transportation on said road shall have leave to appear and defend, demur, or plead to said petition; and if, at that meeting, it shall appear that such publication has been made, the supervisors may, at their discretion, authorize the petitioner, at his cost, to erect a gate as prayed for.—Rev., 2711.

Note.—3093 infra.

7. Supervisors.

3111. To meet, when and where.—The board of supervisors shall meet at some place in their respective townships to be agreed upon by themselves, or, in the absence of such agreement, to be named by their chairman, on the first Saturday of February and August, for the purpose of consulting on the subject of the condition of the roads in their township. They shall once in each year, during the week of their meeting in August, go over and personally examine all the roads in their township. They shall annually at their meeting in February elect some one of their number chairman: Provided, that no supervisor shall receive any compensation for his services as supervisor of public roads.—Rev., 2712.

3112. To make annual reports to superior court.—The board of supervisors shall annually make report to the first term of the superior court of their county after the first Monday in August of the condition of the roads of their township, and if the meetings provided for in this chapter have been held by said board, the judge holding such term of the superior court shall, after his charge to the grand jury and before they shall retire to their room, call upon the clerk of the court for such reports, and they shall then and there be delivered to the foreman of the grand jury.—Rev., 2713.

3113. To have orders appointing overseers served within thirty days; penalties.—The board of supervisors of the township, within ten days after the rise of the board, shall furnish the constable with two copies of each order appointing overseers of roads that may have been made during the sitting of the board. And the constable shall apply at the office of the board, within ten days after the rise of every meeting of the board, for such orders, and, on receiving them, shall, within twenty days, serve each overseer of roads with a copy.

of the order, or leave the same at his usual habitation; and the other copy shall be returned to the next meeting of the board of supervisors, with the date of its reception by him and the date of the service indorsed thereon, or the date when it was left at the residence of the said overseer. And if either the board or constable shall fail to perform any duty enjoined by this section, he shall forfeit ten dollars to the county, to be recovered at any time, by notice to show cause at the instance of the solicitor, who shall prosecute the same in the name of the state: Provided, the delivery to the overseer of the order appointing him made by the board of supervisors of the township, or any one of them, shall be deemed and held to be a legal service of the same.—Rev., 2714.

8. Overseers.

3114. When appointed; when hands allotted.—The board of supervisors shall, annually at the meeting in August, divide the roads of their townships into sections and appoint overseers for such sections at said meeting. They shall at the same time allot the hands to the overseers, and shall also designate the boundaries or points to which each resident shall be liable to work on each section, and shall within five days after such meeting certify to each overseer written notice of his appointment, with a list of the hands assigned to his section. The board of supervisors may at any time alter the sections or allotment, but shall give notice thereof to the overseer. Such overseer shall serve, and be liable as such for neglect of duty, until he shall be relieved by the board, which shall be done only upon his showing that his road is in good condition as prescribed by law. The overseer may resign after the expiration of twelve months, provided his road shall be in good repair and the board of supervisors shall so find; and any overseer so resigning, and whose resignation has been accepted by the board, shall not without his consent be again appointed overseer until after the expiration of two years from the date of his resignation. When a public road shall be a dividing line between townships, the board of commissioners of the county shall determine as to how said road shall be divided, with notice as to the working of said road. The hands may be allotted to a road by allotting all who live or shall live within certain boundaries to be fixed by the board of supervisors, in which event a list of the hands by name need not be given, but the list shall specify the hands living in the prescribed territory.—Rev., 2715.

3115. Reports to supervisors.—Every overseer shall at each and every meeting of the board of supervisors of his township make report to them of the present condition of his road, of the number of days worked on his section since last meeting, of the number of hands who attended and worked each day, of the number and names of hands who failed to attend and work; whether or not they were legally summoned, and whether or not they paid the one dollar as provided. The said overseer shall, before some person authorized to administer an oath, make written affidavit that the report is true and correct. Upon this report sworn to as aforesaid, if it shall appear that any of the hands, after being legally summoned, have failed to attend and work on said road, and that they did not pay the one dollar, then it shall be the duty of the said supervisors, or any one of them, to issue a warrant for the arrest of any such hand, and shall put him upon trial for the offense: Provided, that nothing herein contained shall prevent the overseer of the road from prosecuting, at any time after the offense has been committed, any hand for failure to work on the road, and such cases of prosecution shall be stated in his report to the board of supervisors, that they may not prefer another prosecution for the same offense.—Rev., 2716.

3116. To report money collected and how expended.—The said overseers shall, at the meeting of the supervisors in August, make a report of all moneys collected by them from parties excused from work on the road for the preceding year, with a statement as to how the same was expended. In case of failure of any overseer to make any report to the board of supervisors of public roads of his township, as provided in this chapter, it shall be the duty of the chairman of such board immediately upon such failure to make a sworn statement of the fact before some justice of the peace of an adjoining township, who shall immediately issue his warrant for the arrest of the said overseer, and proceed to try him for the offense.—Rev., 2717.

3117. May lay off tasks to hands.—The overseer, if requested by a majority of the hands on the road assigned him, may, in his discretion, lay off the road in equal portions for the convenience of the laborers, who shall finish his or their part in a time agreed on between him and each person, and on default of any agreeing party, the overseer shall cause such part to be finished by the labor of other persons, and by warrant may recover the value thereof to his own use: Provided, that the time agreed on shall not exceed six days, and that nothing in this section shall be a defense to the overseer, when prosecuted for default concerning the condition of the road.—Rev., 2718.

3118. May use timber and dirt on roads.—Overseers may lawfully cut poles and other necessary timber, for repairing and making bridges and causeways. And whenever earth shall be needed on a public road, and it can not be conveniently procured on either side of the causeway, the overseer may lawfully take the earth from any adjoining land.—Rev., 2719.

3119. Notice to work on road, how served.—When an overseer shall not be able to personally notify the hands three days before the day appointed for working the road, he shall leave at the house of each hand a written summons, specifying the day on which they are required to attend, the place of the road to be worked, and the kind of tools to be brought or used; and the said written summons, left as aforesaid, shall be deemed sufficient notice to the hands required to be notified; and all penalties recovered by an overseer, for default of working on the road, shall be applied by him to the repair of the road of which he is, or may have been overseer.—Rev., 2720.

3120. When roads to be worked.—The overseer of the road shall, as often as the road shall require, not more than six days in any one year, summon the hands of his section to work on the road, but the said hands shall not be required to work continuously for a longer time at any one time than two days, and at least fifteen days shall intervene between workings, except in case of special damage to the road, resulting from a storm. The notice shall be at least three days before the day named for the work, and shall state the hour and the place for the meeting of the hands, and what implement the hand shall bring with him. Every person liable to work on the road who has been so summoned shall appear at the time and place named, and with the implement directed, and shall work on the road under the direction of the overseer until discharged by him: Provided, that no hand shall be required to work for a less time than seven hours nor a longer time than ten hours in any one day. Any person summoned as aforesaid who shall, by twelve o'clock of the day preceding the one appointed for work on the road, pay to the overseer the sum of one dollar shall be relieved from working on the road for one day. The money thus collected by the overseer shall be by him applied on the working and repairing of the road: Provided further, that any person who shall furnish one able-bodied hand as a substitute, with the implement directed, shall be held to have complied with this chapter.—Rev., 2721.

3121. Sign-posts put up.—Overseers shall cause to be set up, at the forks of their respective roads, a post or posts, with arms pointing the way of each road, with plain and durable directions to the most public places to which they lead, and with the number of miles from that place as near as can be computed; and every overseer who shall, for ten days after notice of his appointment, neglect to do so and to keep the same in repair, shall forfeit and pay for every such neglect ten dollars.—Rev., 2722.

3122. Mile-posts put up correctly.—Every overseer of a road shall cause the same to be exactly measured, where it has not already been done, and at the end of each mile, shall mark in a plain, legible, and durable manner, the number of the miles, beginning, continuing, and marking the numbers in such manner and form as the board of supervisors shall direct; and every overseer shall keep up and repair such marks and numbers of his road. If an overseer shall neglect any of the duties prescribed in this section, for the space of thirty days after his appointment to office, he shall forfeit and pay four dollars, and the like sum for every thirty days thereafter the said marking may be neglected.—Rev., 2723.

3123. Penalty for neglecting duty.—Every overseer who shall neglect to do any other duty, by this chapter directed to be done, or who shall not keep the roads and bridges clear and in repair, or shall let them remain uncleared or out of repair, during the space of ten days, unless hindered by extreme bad weather, shall forfeit for every such offense four dollars, and be liable for such damages as may be sustained: Provided, that nothing in this section shall excuse any neglect of duty by an overseer, as the same is prescribed in any other part of this chapter.—Rev., 2724.

9. Who to Work.

3124. Who liable.—All able-bodied male persons between the ages of eighteen years and forty-five years (between twenty-one years and forty-five years in Columbus and Tyrrell counties) shall be required under the provisions of this chapter to work on the public roads, except the members of the board of supervisors of public roads; but no person shall be compelled to work more than six days in any one year, except in case of damage resulting from a storm: Provided, that ten days instead of six days shall be the limit as to the counties west of the Blue Ridge.—Rev., 2725.

3125. Exemption of students.—No male student attending any school, college or academy or other institution of learning in North Carolina shall be compelled to perform any road duty or to work on any street or road, or to furnish any person to work in his place, or to pay any sum or sums of money in lieu of work on said road or roads, on or for any road or street in any county, city, town or township in which said school, college, academy or other institution of learning is located: Provided, however, that this act shall not exempt any said male person from any road duty or road tax when such student is a bona fide and legally qualified resident of said district and was such prior to becoming a student of said institution of learning.—Laws 1907, c. 945.

3126. Who exempt; how exemption obtained.—No person between the ages prescribed shall be exempted from working upon the public roads, except such as shall be exempted by the general assembly, or by the board of supervisors of the township, on account of personal infirmity, of which the said board shall be the sole judge.—Rev., 2726.

10. General Provisions.

3127. Traction engines allowed on roads.—It shall be lawful for any person to run and use traction engines and road steamers upon the public roads.—Rev., 2727.

3128. Owners of land or timber used on road, remedy for.—The owner of any land or timber used for building or repairing public roads, may file his petition before the board of commissioners of the county wherein the injury is done; and, for damages sustained thereby, the board shall make the petitioner adequate compensation: Provided, that this and section two thousand seven hundred and nineteen shall not apply to the lands adjoining or contiguous to the causeway, or great road leading across Eagle's island to Wilmington.—Rev., 2728.

CHAPTER LXI.

SHERIFF.

1. Office of.

3129. Election for.—In each county a sheriff shall be elected by the qualified voters thereof, as is prescribed for members of the general assembly, and shall hold his office for two years.—Rev., 2808.

3130. Ineligibility for.—No person shall be eligible to the office of sheriff who is not of the age of twenty-one years, and has not resided in the county in which he is chosen for one year immediately preceding his election, or who is a member of the general assembly, or practicing attorney, or who theretofore has been sheriff of such county, and hath failed to settle with and fully pay up to every officer the taxes which were due from him.—Rev., 2809.

3131. Resignation of.—Every sheriff may vacate his office by resigning the same to the board of county commissioners of his county; and thereupon the board may proceed to elect another sheriff.—Rev., 2810.

3132. Vacancy in, how filled; guilty of a misdemeanor.—If any sheriff shall be convicted of a misdemeanor in office, the court may at its discretion, as a part of his punishment, remove him from office; and on any vacancy in the office, created by this or any other means, the coroner of the county shall execute all process directed to the sheriff, until the first meeting of the county commissioners next succeeding such vacancy, when the board shall elect a sheriff to supply the vacancy for the residue of the term, who shall possess the same qualifications, enter into the same bonds, and be subject to removal, as the sheriff regularly elected; and should the board fail to fill such vacancy, the coroner shall continue to discharge the duties of sheriff until it shall be filled.—Rev., 2811.

2. Bond.

3133. County commissioners to take.—The board of county commissioners in every county shall take and approve the official bonds of the sheriffs, which they shall cause to be registered and the originals deposited with the clerk of the superior court for safe-keeping. Said bonds shall be taken on the first Monday of December next after the election of sheriffs, but no board shall permit any former sheriff to give bonds for, or re-enter upon the duties of the office, until he has produced before the board the receipt in full of every such officer for taxes which he has or should have collected.—Rev., 2812.

3134. Justification of, required when bond insufficient.—It shall be the duty of the board of county commissioners whenever they shall be of opinion that the bonds of the sheriff of their county are insufficient, to notify said sheriff in writing to appear within ten days and give other and better sureties, or justify the sureties on his bonds; and in case such sheriff shall fail to appear on notice, or fail to give sufficient

bonds, or to justify his bonds, it shall be the duty of said board to elect forthwith some suitable person in the county as sheriff for the unexpired term, and who shall give proper and lawful bonds and be subject to like obligations and penalties.—Rev., 2813.

A forfeiture of office and a vacancy can be judicially declared only after trial and culpability is established; therefore the office of sheriff does not become vacant by failure of the incumbent to renew his bond.—*Vann v. Pipkin*, 77—408.

The bond of a sheriff, conditioned for the due collection of taxes during his continuance in office is liable for taxes collected by him upon a tax-list which had been in the hands of his predecessor in office.—*Commissioners of Greene v. Taylor*, 77—404.

A bond given by a deputy sheriff to a sheriff to secure the faithful performance of his duties, is a private bond, in which any condition may be inserted which will carry out the intentions of the parties. Such a bond is not subject to the rules which govern the construction of sheriffs' official bonds.—*Mullen v. Whitmore*, 74—477.

The surety on the general tax bond of a sheriff is liable for all taxes collected, whether general or special.—*Cherry v. Wilson*, 78—166.

3135. Commissioners liable for loss, when.—If any board of county commissioners shall fail to comply in good faith with the provisions of this subchapter, they shall be liable for all loss sustained in the collection of taxes, on motion to be made by the solicitor of the district.—Rev., 2814.

3136. Liability of sureties on.—The sureties to a sheriff's bond shall be liable for all fines and amercements imposed on him, in the same manner as they are liable for other defaults in his official duty.—Rev., 2815.

3. Duties of.

3137. To receipt for process.—Every sheriff, coroner or constable shall, when requested, give his receipt for all original and mesne process placed in his hands for execution, to the party suing out the same, his agent or attorney; and such receipt shall be admissible as evidence of the facts therein stated, against such officer and his sureties, in any suit between the party taking the receipt and such officer and his sureties.—Rev., 2816.

3138. Execute process; false return, penalty for.—Every sheriff, by himself or his lawful deputies, shall execute all writs and other process to him legally issued and directed, within his county, or upon any river, bay, or creek adjoining thereto, or in any other place where he may lawfully execute the same, and make due return thereof, under the penalty of forfeiting one hundred dollars for each neglect, where such process shall be delivered to him twenty days before the sitting of the court to which the same is returnable, to be paid to the party aggrieved by order of the court, upon motion and proof of such delivery, unless such sheriff can show sufficient cause to the court, at the next succeeding term after the order; and for every false return, the sheriff shall forfeit and pay five hundred dollars, one moiety thereof to the party aggrieved, and the other to him that will sue for the same; and moreover be further liable to the action of the party aggrieved, for damages; and every sheriff and his deputies, and every constable shall execute all writs and other process to him legally issued and directed from a justice's court and make due return thereof, under penalty of forfeiting one hundred dollars for each neglect or refusal, where such process shall be delivered to him ten days before the return day thereof, to be paid to the party aggrieved by order of the said court, upon motion and proof of such delivery, unless such sheriff or constable can show sufficient cause to the court at a day within three months from the date of the entry of the judgment nisi, of which the said officer shall be duly notified.—Rev., 2817.

A sheriff is liable upon his official bond for a failure to apply proceeds of sale of debtor's land in payment of an execution in his hands at the time of sale, issued upon a judgment having a prior lien.—*Tilmon v. Rhyne*, 89—64.

A regular officer is bound to obey a warrant directed to him, if it is for an offense within the jurisdiction of the justice (either to bind over or to try); and a special officer is equally protected by the law when he executes such warrant, though not bound to obey it, nor sworn as a regular officer.—*State v. Jones*, 88—671.

A justice of the peace has no power to amerce the sheriff of a county other than that in which he holds his court, for failure to make due return to process.—*Boggs v. Davis*, 82—27.

A mistake of fact as to the date of sale, and endorsed upon an execution by the sheriff will not excuse him from liability for false return.—*Finley v. Hayes*, 81—368.

An action for claim and delivery will lie against an officer for wrongful seizure of property under execution.—*Churchill v. Lee*, 77—341.

A sheriff selling land under execution may maintain an action in his name against the purchaser for the amount bid upon tendering a deed for the land sold.—*McKee v. Lineberger*, 69—217.

It is unnecessary, to enable the sheriff to bring such action, that he should first make a return of the sale on the execution.—*Ibid*.

A sheriff, on a sale by him under execution, can demand cash of the purchaser, and on his refusal to pay may re-sell, even though the purchaser is entitled to the proceeds of sale, less the cost, and offered to pay cash for the amount of the cost. But if the sheriff acts arbitrarily he may subject himself to an action for damages.—*Isler v. Andrews*, 66—553.

A sheriff is bound to return every process which comes to his hands, not void, with a statement of his action under it, and if he has not completely obeyed it, with a lawful reason for his omission.—*Bryan v. Hubbs*, 69—423.

A sheriff is not required to execute process until his fees are paid or tendered by the person at whose instance the service is to be rendered, but this does not excuse him from making a return of the process.—*Jones v. Gupton*, 65—48.

Execution from a justice's court must be directed to "any constable or other lawful officer of the county," and if it comes into the hands of the sheriff he must obey it. The sheriff must execute writs issued and directed to him from a superior or justice's court under penalty of \$100 for neglecting to make return. A sheriff can not serve process addressed to a constable.—*McGlaughan v. Mitchell*, 126—681.

3139. Notice of judgment nisi, how given.—In all cases where any sheriff or other officer shall be amerced for failure to make due return of any execution or other process placed in his hands, or for any default whatsoever in office, and judgment nisi or otherwise for the penalty or forfeiture in such case made and provided shall be entered, it shall be sufficient to give such sheriff notice, according to law, under the hand of the clerk and seal of the court, where such judgment may be entered, of a motion for a judgment absolute, or for execution, as the case may be; and no other notice, summons or suit shall be necessary to enforce the same; and such proceedings shall be deemed and held in aid of a suit or other proceedings already instituted in court.—*Rev.*, 2818.

3140. Summonses, orders and judgments, how executed.—Whenever the sheriff may be required to serve or execute any summons, order or judgment, or to do any other act, he shall be bound to do so in like manner as upon process issued to him, and shall be equally liable in all respects for neglect of duty; and if the sheriff be a party, the coroner shall be bound to perform the service, as he is now bound to execute process where the sheriff is a party; and this chapter relating to sheriffs shall apply to coroners when the sheriff is a party. Sheriffs and coroners may return process by mail. Their liabilities in respect to the execution of process shall be as prescribed by law.—*Rev.*, 2819.

3141. Outgoing sheriffs not executing process, penalty.—Any sheriff who shall have received a precept, and shall go out of office before the return day thereof, without having executed the same, shall forfeit and pay to the party at whose instance it was issued the sum of one hundred dollars, if such precept shall have remained in his hands for such length of time wherein it might have been well executed by him; unless the same shall have been thereafter executed by the successor of such sheriff, and returned at the day and place commanded therein; or unless it shall have been delivered over to the succeeding sheriff time enough to have allowed of its being executed by him; and the penalty aforesaid shall be recoverable by notice against such outgoing sheriff and his sureties.—*Rev.*, 2820.

3142. Pay money to plaintiff, or into clerk's office.—In all cases where a sheriff has collected money upon an execution placed in his hands, if there be no bona fide contest over the application thereof, he shall immediately pay the same to the plaintiff, or into the office

of the clerk of the court from which the execution issued, and upon his failure to make such payment upon demand, he shall be liable to a penalty of one hundred dollars, to be collected as other penalties.—Rev., 2821.

3143. Solicitor to prosecute officer for escape.—It shall be the duty of solicitors, when they shall be informed or have knowledge of any felon, or person otherwise charged with any crime or offense against the state, having within their respective districts escaped out of the custody of any sheriff, deputy sheriff, coroner, constable or jailer, to take all necessary measures to prosecute such sheriff, or other officer so offending.—Rev., 2822.

3144. Not to allow escape.—When any sheriff shall take or receive and have in keeping the body of any debtor in execution, or upon attachment for not performing a judgment for the payment of any sum of money, and shall wilfully or negligently suffer such debtor to escape, the person suing out such execution or attachment, his executors, or administrators, shall have and maintain an action for the debt against such sheriff and the sureties on his official bond, and in case of his death, against his executors or administrators, for the recovery of all such sums of money as are mentioned in the said execution or attachment, and damages for detaining the same.—Rev., 2823.

3145. Have custody of jail.—The sheriff shall have the care and custody of the jail in his county; and shall be, or appoint, the keeper thereof.—Rev., 2824.

3146. Prevent jail breaking for lynching.—When the sheriff of any county has good reason to believe that the jail of his county is in danger of being broken or entered for the purpose of killing or injuring a prisoner placed by the law in his custody, it shall be his duty at once to call on the commissioners of the county, or some one of them, for a sufficient guard for the jail, and in such case, if the commissioner or commissioners fail to authorize the employment of necessary guards to protect the jail, and by reason of such failure the jail is entered and a prisoner killed, the county wherein whose jail the prisoner is confined shall be responsible in damages, to be recovered by the personal representatives of the prisoner thus killed, by action begun and prosecuted before the superior court of any county in this state.—Rev., 2825.

3147. Publish list of delinquent taxpayers.—Whenever any sheriff or tax-collector shall be credited on settlement with any tax or taxes, by him returned as insolvent, dead or removed, he shall forthwith make publication at the courthouse door, and at least one public place in each and every township in his county, of a complete list of the names of such insolvent, dead or removed delinquents, with the amount of the tax due from each, and the sum total so credited. Such list, by order of the board of commissioners, may also be published in any newspaper printed in the county; in which case, the expense of the advertisement, for such time as may be directed, shall be paid by the county.—Rev., 2826.

3148. Furnish list of liquor dealers to grand jury.—The sheriff shall lay before the grand jury of his county, at each court, as soon as the grand jury shall be assembled, a list of all persons who may have obtained license to retail spirituous liquors by small measure, within two years previous to said court; which list the foreman of the grand jury, at the close of its session, shall deliver to the clerk for safe-keeping; and any sheriff failing to perform the duty aforesaid shall forfeit and pay to the state ten dollars, to be recovered by the prosecuting officer, in the same manner as the penalties against sheriffs for not returning process.—Rev., 2827.

3149. Not to farm office.—No sheriff shall let to farm in any manner, his county, or any part of it, under pain of forfeiting five hundred dollars, one-half to the use of the county, and the other half to the person suing for the same.—Rev., 2828.

3150. Obligation taken by sheriff, payable to himself only.—The sheriff or his deputy shall take no obligation of or from any person in his custody for or concerning any matter or thing relating to his office otherwise payable than to himself as sheriff and dischargeable upon the prisoner's appearance and rendering himself at the day and place required in the writ (whereupon he was or shall be taken or arrested), and his sureties discharging themselves therefrom as special bail of such prisoner or such person keeping within the limits and rules of any prison; and every other obligation taken by any sheriff in any other manner or form, by color of his office, shall be void, except in any special case, any other obligation shall be, by law, particularly and expressly directed; and no sheriff shall demand, exact, take or receive any greater fee or reward whatsoever, nor shall have any alliance, reward or satisfaction from the public, for any service by him done, other than such sum as the court shall allow for ex officio services, and the allowance given and provided by law.—Rev., 2829.

Note.—Action against, barred by statute of limitations, see s. 393 of Revisal.

When judge absent, adjourn court from day to day, see s. 1510 of Revisal.

Laying off homestead, see s. 687 of Revisal.

Bail liable to, when, see Civil Procedure.

Bond when acting as county treasurer, see s. 1397 of Revisal.

Duty in claim and delivery, see that subject.

Duty in attachment, see that subject.

Day of receipt of process endorsed thereon, see ss. 914, 3149 of Revisal.

Deeds made by whom after expiration of office or death of sheriff, see ss. 950, 951, 2905 of Revisal.

Failure to return process a misdemeanor, see s. 3604 of Revisal.

Releasing prisoner without bail, see s. 3208 of Revisal.

Tax collector for county, see ss. 1376 and 2851 of Revisal.

CHAPTER LXII.

STATUTES, CONSTRUCTION OF.

3151. Repeal of statute not to affect actions.—The repeal of a statute shall not affect any action brought before the repeal, for any forfeitures incurred, or for the recovery of any rights accruing under such statute.—Rev., 2830.

3152. Rules for construction of statutes.—In the construction of all statutes, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the general assembly, or repugnant to the context of the same statute, that is to say:

1. Singular and plural number, masculine gender, etc.

Every word, importing the singular number only, shall extend and be applied to several persons or things, as well as to one person or thing; and every word importing the plural number only, shall extend and be applied to one person or thing, as well as to several persons or things; and every word importing the masculine gender only, shall extend and be applied to females as well as to males, unless the context clearly shows to the contrary.

2. Authority of public officers, etc., exercised by majorities, unless, etc.

All words purporting to give a joint authority to three or more public officers or other persons shall be construed as giving such authority to a majority of such officers or other persons, unless it shall be otherwise expressly declared in the law giving the authority.

3. "Month" and "year."

The word month shall be construed to mean a calendar month, unless otherwise expressed; and the word "year," a calendar year, unless otherwise expressed; and the word "year" alone shall be equivalent to the expression "year of our Lord."

4. Leap-year, how counted.

In every leap-year, the increasing day and the day before, in all legal proceedings shall be counted as one day.

5. "Oath" and "sworn."

The word "oath" shall be construed to include "affirmation," in all cases where by law an affirmation may be substituted for an oath, and in like cases the word "sworn" shall be construed to include the word "affirm."

6. "Person" and "property."

The word "person" shall extend and be applied to bodies politic and corporate, as well as to individuals, unless the context clearly shows to the contrary. The words "real property" shall be coextensive with lands, tenements and hereditaments. The words "personal property" shall include moneys, goods, chattels, choses in action and evidences of debt, including all things capable of ownership, not descendible to the heirs-at-law. The word "property" shall include all property, both real and personal.

7. "Preceding" and "following."

The words "preceding" and "following," when used by way of reference to any section of this Revisal shall be construed to mean the section next preceding or next following that in which such reference is made; unless when some other section is expressly designated in such reference.

8. "Seal."

In all cases in which the seal of any court or public office shall be required by law to be affixed to any paper issuing from such court or office, the word "seal" shall be construed to include an impression of such official seal, made upon the paper alone, as well as an impression made by means of a wafer or of wax affixed thereto.

9. "Will."

The term "will" shall be construed to include codicils as well as wills.

10. "Written" and "in writing."

The words "written" and "in writing" may be construed to include printing, engraving, lithographing, and any other mode of representing words and letters: Provided, that in all cases where a written signature is required by law, the same shall be in a proper handwriting, or in a proper mark.

11. "State" and "United States."

The word "state," when applied to the different parts of the United States, shall be construed to extend to and include the District of Columbia and the several territories, so-called; and the words "United States" shall be construed to include the said district and territories and all dependencies.

12. "Imprisonment for one month," how construed.

The words "imprisonment for one month," wherever used in any of the statutes, shall be construed to mean "imprisonment for thirty days."
—Rev., 2831.

3153. Where amended, how construed.—Where a part of a statute is amended it is not to be considered as having been repealed and re-enacted in the amended form; but the portions which are not altered are to be considered as having been the law since their enactment, and the new provisions as having been enacted at the time of the amendment.—Rev., 2832.

CHAPTER LXIII.

STRAYS.

3154. Owner notified; if unknown, register of deeds notified.—Any person who shall take up any stray horse, mare, colt, mule, ass or jennet, neat cattle, hog or sheep, shall within ten days after taking up such stray inform the owner, if to him known, if not, he shall inform the register of deeds of the supposed age, marks, brands and color of the stray, and that the same was taken up at his plantation or place of abode; whereupon the register of deeds shall record such information in a book kept by him for that purpose, for which service the taker-up of said stray or strays shall pay a fee of twenty-five cents, except for hogs and sheep, for which the fee shall be ten cents. The register of deeds shall at once publish a notice of the taking up of such stray, by posting the same at the courthouse door, and if the cost does not exceed two dollars, then in some newspaper published in the county. Such notices shall be published for thirty days, and shall contain a full and complete description of said stray and of all marks or brands on the same, and when and where the same was taken up. The fees for publishing such notices shall be paid by the party taking up the stray.—Rev., 2833.

3155. Owner may reclaim.—When any stray has been taken up, the owner may at any time before a sale reclaim such stray by proving his ownership and paying to the party capturing the same the actual costs paid the register of deeds as provided in the preceding section, together with the actual costs of keeping such stray, as fixed by the county commissioners. The board of commissioners of the several counties shall fix a scale of costs for keeping strays.—Rev., 2834.

3156. When and how strays sold.—If the owner of any stray shall fail to claim the same within thirty days after the publication of the notice required by law, the person taking up the stray shall cause the stray to be appraised by the nearest magistrate and two freeholders, none of whom shall receive any fees for such services. Such appraisal shall give a full and accurate description of such stray and shall by the magistrate be returned to the register of deeds, and by him recorded in his book for strays; and the register of deeds shall issue an order to the sheriff directing him to sell such stray, and the sheriff shall sell such stray at public auction after ten days public advertisement as for sales of personal property under execution; and out of the proceeds he shall pay the cost of publishing the notices as to strays, the costs of keeping and the costs of sale, and shall pay the surplus to the county treasurer for the benefit of the public school fund of the county. The county board of education shall, at any time within twelve months after such funds have been paid to the county treasurer, upon due proof of ownership, issue an order commanding the county treasurer to pay to the owner of the stray the net amount paid the county treasurer as the proceeds of the sale of the stray.—Rev., 2835.

CHAPTER LXIV.

SUNDAYS AND HOLIDAYS.

3157. Work in ordinary calling on Sunday forbidden.—On the Lord's day, commonly called Sunday, no tradesman, artificer, planter, laborer, or other person, shall, upon land or water, do or exercise any labor, business or work, of his ordinary calling, works of necessity and charity alone excepted, nor employ himself in hunting, fishing or fowling, nor use any game, sport or play, upon pain that every person so offending, being of the age of fourteen years and upwards, shall forfeit and pay one dollar.—Rev., 2836.

3158. What process executed on Sunday.—It shall not be lawful for any sheriff, constable, or other officer to execute any summons, capias, or other process on Sunday, unless the same be issued for treason, felony or misdemeanor.—Rev., 2837.

3159. Dates of public holidays.—The first day of January, the nineteenth day of January, the twenty-second day of February, the tenth day of May, the twentieth day of May, the fourth day of July, the first Monday in September, Tuesday after the first Monday in November when a general election is held, the day appointed by the governor as a thanksgiving day, and the twenty-fifth day of December of each and every year, are declared to be public holidays; and whenever any such holiday shall fall upon Sunday, the Monday following shall be a public holiday.—Rev., 2838; Laws 1907, c. 996.

3160. Acts to be done on Sunday or holidays.—Where the day or the last day for doing an act required or permitted by law to be done falls on Sunday or on a holiday the act may be done on the next succeeding secular or business day.—Rev., 2839.

CHAPTER LXV.

SURETY.

3161. Suretyship shown, what judgment and execution to contain.—In the trial of actions upon contracts, either of the defendants may show in evidence that he is surety, and if it be satisfactorily shown, the jury in their verdict, or the justice of the peace in his judgment, shall distinguish the principal and surety, which shall be indorsed on the execution by the clerk or justice of the peace issuing it.—Rev., 2840.

3162. Property of principal sold before that of surety.—When an execution, indorsed as aforesaid, shall come to the hands of any officer for collection, he shall levy on all the property of the principal, or so much thereof as shall be necessary to satisfy the execution, and for want of sufficient property of the principal, also on the property of the surety, and make sale of all the property of the principal levied on before that of the surety.—Rev., 2841.

Endorsers upon accommodation papers, where there is no special agreement to the contrary, and where neither is benefited, are regarded as co-sureties.—*Daniel v. McRae*, 9—590.

A joint maker of a sealed note may show that he was a surety merely, for the purpose of pleading the statute of limitations in favor of sureties, but it must also be shown that the creditor knew he was surety, if that fact does not appear on the face of the paper.—*Torrence v. Alexander*, 85—143.

Where a surety pays money for his principal he may sue his co-surety without a demand.—*Sherrod v. Woodard*, 15—360.

Where it appeared on the face of the note that certain parties thereto were sureties, evidence may be admitted to show that they were really principals.—*Williams v. Glenn*, 92—253.

Where a note is made payable to the cashier of a certain bank, at his banking house, but transferred by the principal, though with the knowledge of his surety, to a third party, such surety is not liable.—*Dewey v. Cochran*, 49—184.

Where a surety pays a debt, he is entitled to an assignment of the securities held by the creditor and to a substitution of the surety's rights therein. *Brinson v. Thomas*, 55—414; and if the creditor has released any security held by him, the surety is released from liability.—*Pipkin v. Boyd*, 40—91.

A surety having paid the debt of his principal, is not required to give notice before bringing suit against his co-surety.—*Sikes v. Quick*, 52—19.

If a creditor agree to give the principal further time, the surety is released, provided the creditor receives some benefit thereby, otherwise he is not.—*Howerton v. Sprague*, 64—451.

If the creditor and principal debtor make an agreement to postpone the day of payment named in the note the surety is thereby relieved from all liability.—*Scott v. Harris*, 76—205.

If one sign a note with the understanding that he is not to be bound unless a certain other person shall also sign the same as surety, he is not bound unless such certain person sign the note.—*Cowan v. Baird*, 77—201.

Sureties can sustain a bill to have a debt paid by their principal, or out of his estate before they have been compelled to pay the debt.—*Thigpen v. Price*, 62—146.

The relation between a creditor and surety does not oblige the former to active diligence in collecting his debt out of the principal.—*Thornton v. Thornton*, 63—211.

A surety who pays the debt of his principal is barred of his right of recovery against the principal in three years after such payment.—*Bledsoe v. Nixon*, 68—521.

A surety to a note who pays the debt of his principal is entitled to all the securities which the creditor took from the principal.—*York v. Landis*, 65—535.

The surety on the bond is entitled to all the legal and equitable defenses to which his principal is entitled, which attached to or were connected with the debt evidenced by such bond.—*Jarrett v. Martin*, 70—459.

When a note is assigned after maturity, if the fact of suretyship was known to the assignor, the surety is protected by the statute of limitations after three years, whether the assignee had notice of such suretyship or not.—*Cabell v. Long*, 84—17.

When the surety on a sealed note pleads the statute of limitations, proof that he is surety is not of itself sufficient, but he must also show that the creditor had notice of his suretyship, if the same does not appear on the face of the note.—*Torrence v. Alexander*, 85—143.

3163. Summary remedy for and against principal.—Any person, who may have paid money for and on account of those for whom he became surety, upon producing to the superior court, or any justice of the peace having jurisdiction of the same a receipt, and showing that an execution has issued, and he has satisfied the same, and making it appear by sufficient testimony that he has laid out and expended any sum of money, as the surety of such person, and move the court or justice of the peace, as the case may be, for judgment against his principal, for the amount which he has actually paid; a citation having previously issued against the principal to show cause why execution should not be awarded; and should not the principal show sufficient cause, the court or justice shall award execution against the estate of the principal.—*Rev.*, 2842.

Sureties can sustain a bill to have a debt paid by their principal or out of his estate before they are compelled to pay the debt.—*Thigpen v. Price*, 62—146.

A surety to a note who pays off and discharges the same is entitled to the benefit of all the securities which have been taken by the creditor from the principal.—*York v. Landis*, 65—535.

3164. Surety paying debt of deceased principal, subrogated to creditors' rights.—Whenever a surety, or his representative, shall pay the debt of his deceased principal, the claim thus accruing shall have such priority in the administration of the assets of the principal as had the debt before its payment.—*Rev.*, 2843.

3165. Co-surety liable for contribution.—Where there are two or more sureties for the performance of a contract, and one or more of them may have been compelled to perform and satisfy the same, or any part thereof, and the principal shall be insolvent, or out of the state, such surety may have and maintain an action against every other surety, for a just and ratable proportion of the sum which may have been paid as aforesaid, whether of principal, interest or cost.—*Rev.*, 2844.

Where successive bonds are given for the faithful discharge of a trust, all the bonds given during the continuance of the office are cumulative, and the sureties on each bond stand in the relation of co-sureties to the sureties on all the other bonds.—*Pickens v. Miller*, 83—543.

It is not necessary to entitle a surety to maintain an action for contribution, that the amount of his liability which was paid by him should be fixed by a judgment. The waiver or withdrawal of a plea of statute of limitations by a surety in an action against him does

not affect his right afterwards to maintain an action for contribution.—*Bright v. Lennon*, 83—183.

3166. May dissent from stay of execution; not then liable to surety on stay.—Whenever any judgment shall be obtained before a justice, against a principal and his surety, and the principal debtor shall desire to stay the execution thereon, but the surety is unwilling that such stay shall be had, the surety may cause his dissent thereto to be entered by the justice, which shall absolve him from all liability to the surety who may stay the same. And the constable or other officer, who may have the collection of the debt, shall make the money out of the property of the principal debtor, and that of the surety for the stay of execution, if he can, before he shall sell the property of the surety before judgment.—*Rev.*, 2845.

3167. May notify creditor to collect; penalty for delay.—In all cases where any surety or indorser on any note, bill, bond, or other written obligation, shall consider himself in danger of loss in consequence of his contingent liability, either from the insolvency or misconduct of the principal, in said note, bill, bond, or other written obligation, or from the negligence of the payee or holder of any such instrument, it shall be lawful for such surety or indorser, at any time after such note, bill, bond, or other written obligation shall have become due and payable, to cause written notice to be given to the payee or holder of any such paper or obligation, requiring him to bring suit on said obligation, and to use all reasonable diligence to save harmless such surety or indorser: Provided, nothing herein contained shall apply to official bonds, or bonds given by any person acting in a fiduciary capacity.—*Rev.*, 2846.

3168. Negligence of creditor discharges surety, when; proviso.—Should the payee or holder of any such note, bond, bill, or other written obligation, refuse or fail, within thirty days from the service of said notice, to bring suit in the appropriate court in an effort to save harmless such surety or indorser, such refusal or failure to sue shall operate as a discharge of such surety or indorser, from all liability whatever, on any such note, bond, bill, or other written obligation: Provided, that this notice shall not have the effect to discharge from liability any co-surety who does not join in such notice, or who has not given a separate notice: Provided further, that this and the preceding section shall not apply to holders of such note, bond, bill, or obligation, who hold the same as collateral security or in trust.—*Rev.*, 2847.

3169. How notice served.—Such notice shall be served by the sheriff or his deputy, who shall return it to the party for whose benefit the notice was issued, which shall be evidence of the fact in all courts.—*Rev.*, 2848.

In an action upon a bond, where the defendant pleaded that he was a surety thereto and had given notice to the plaintiff to bring suit against the principal, parol evidence is admissible to prove the fact of suretyship.—*Cole v. Fox*, 83—463.

Where the defence set up is that the party sued is only a surety, and the fact of his suretyship does not appear from the instrument signed by him, he must, in order to derive any advantage therefrom, prove that the creditor had knowledge of the suretyship.—*Goodman v. Litaker*, 84—8

CHAPTER LXVI.

TAXES, COLLECTION OF.

3170. (For provisions relative to the above entitled matter see sections 2849 to 2914, inclusive, of the Revisal of 1905.)

CHAPTER LXVII.

TOWNS.

1. Incorporation and Powers.

3171. Every town a body politic.—Every incorporated city or town is a body politic and corporate, and shall have the powers prescribed by statute, and those necessarily implied by law, and no other.—Rev., 2915.

3172. Corporate powers.—A city or town is authorized:

1. To sue and be sued in its corporate name.
2. Out of any funds on hand, and without creating any debt, to purchase and hold real estate for the use of its inhabitants.
3. To purchase and hold land, within or without its limits, not exceeding fifty acres, for the purpose of a cemetery, and to prohibit the burial of persons at any other place in said town, and to regulate the manner of burial in such cemetery. All municipal corporations purchasing real property at any trustee's or mortgagee's sale or commissioner's sale or execution or tax sale shall be entitled to a conveyance therefor from the trustee, mortgagee or other person or officer conducting such sale, and deeds to such municipal corporations or their assigns shall have the same force and effect as conveyances to private purchasers. The provisions of this subsection shall apply to such sales and conveyances as may have been heretofore made by the persons and officers mentioned in the foregoing section.
4. To make such contracts and purchase and hold such personal property as may be necessary to the exercise of its powers.
5. To make such orders for the disposition or use of its property as the interest of the town requires.
6. To grant upon reasonable terms franchises for public utilities, such grants not to exceed the period of sixty years, unless renewed at the end of the period granted; also to sell or lease any water-works, lighting plants, gas or electric, or any other public utility which may be owned by any city or town: Provided, that in the event of such sale or lease it shall be approved by a majority of the qualified voters of such city or town; and also to make contracts, for a period not exceeding thirty years, for the supply of light, water or other public commodity: Provided, that this act shall not apply to New Hanover and Cumberland counties.
7. To provide for the municipal government of its inhabitants in the manner required by law.
8. To levy and collect such taxes as are authorized by law.
9. To do and perform all other duties and powers authorized by law.—Rev., 2916.—Laws 1907, c. 978.

3173. How corporate powers exercised.—The corporate powers can be exercised only by the board of commissioners, or, in pursuance of resolutions adopted by them, unless otherwise specially provided by law; which board shall consist of not less than three nor more than seven commissioners.—Rev., 2917.

3174. How far this chapter applicable; meaning of "commissioners."—This chapter shall apply to all incorporated cities and towns where the same shall not be inconsistent with special acts of incorporation, or special laws in reference thereto, and the word "commissioners" shall also be construed to mean "aldermen," or other governing municipal authorities. The sections of this chapter relating to municipal or town elections shall apply to all cities and towns not expressly excepted by law.—Rev., 2918.

2. Commissioners.

3175. Elected biennially by qualified voters.—The board of commissioners of each town shall be biennially elected by the qualified voters thereof, at the time and in the manner prescribed by law.—Rev., 2919.

3176. Oath of office of.—The commissioners shall take and subscribe an oath before some person authorized by law to administer oaths that they will faithfully and impartially discharge the duties of their office, and such oath shall be filed with the mayor of such town and entered in a book kept for that purpose.—Rev., 2920.

3177. Vacancy, how filled.—In case of a vacancy after election in the office of commissioner the others may fill it until the next election.—Rev., 2921.

3178. How number of, changed.—After the first election the voters of any town may, whenever and as often as they choose, at the time of electing commissioners, and after due notice given thereof by the commissioners then in authority, by a majority of all votes cast, alter the number of commissioners, so that the number be not more than seven nor less than three; and thenceforth the number of commissioners agreed on shall be chosen.—Rev., 2922.

3. Powers of Commissioners.

3179. Ordinances, rules and regulations made by.—The board of commissioners shall have power to make ordinances, rules and regulations for the better government of the town, not inconsistent with this chapter and the law of the land, as they may deem necessary; and may enforce them by imposing penalties on such as violate them; and may compel the performance of the duties imposed upon others, by suitable penalties.—Rev., 2923.

Note.—For proof of ordinances on appeal, see Evidence, s. 1595 of Revisal.

3180. May levy taxes.—The board of commissioners may annually levy and cause to be collected for municipal purposes a tax not exceeding fifty cents on the hundred dollars, and one dollar and fifty cents on each poll, on all persons and property within the corporation, which may be liable to taxation for state and county purposes; and may annually lay a tax on all trades, professions and franchises carried on or enjoyed within the city, unless otherwise provided by law; and may lay a tax on all such shows and exhibitions for reward as are taxed by the general assembly; and on all dogs, and on swine, horses and cattle, running at large within the town; and on all persons, apothecaries and druggists excepted, retailing or selling liquors or wine of the measure of a quart or less, a tax not exceeding twenty-five dollars per year, if the sale of liquor is allowed in such town.—Rev., 2924.

3181. May appoint a constable and other officers; fix salary of mayor and others.—The board of commissioners may appoint a town constable, and such other officers and agents as may be necessary to enforce their ordinances and regulations, keep their records, and conduct their affairs; may determine the amount of their salaries or compensations; and also the compensation or salary of the mayor; may impose oaths of office upon them, and require bonds from them payable to the state, in proper penalties for the faithful discharge of their duties.—Rev., 2925.

3182. May appoint police.—The board of commissioners may appoint town watch or police, to be regulated by such rules as the board may prescribe.—Rev., 2926.

3183. Policemen may execute criminal process.—A policeman shall have the same authority to make arrests and to execute criminal pro-

cess, within the town limits, as is vested by law in a sheriff.—Rev., 2927.

3184. May establish and regulate markets; street sales free, when.—The board of commissioners may establish and regulate their markets, and prescribe at what place, within the corporation, shall be sold marketable things; in what manner, whether by weight or measure, may be sold grain, meal or flour (if the flour be not packed in barrels), fodder, hay, or oats in straw; may erect scales for the purpose of weighing the same, appoint a weigher, fix his fees, and direct by whom they shall be paid. But it shall not be lawful for the commissioners or other authorities of any town to impose any tax whatever on wagons or carts selling farm products, garden truck, fish and oysters on the public streets thereof.—Rev., 2928.

3185. May abate nuisances.—The board of commissioners may pass laws for abating or preventing nuisances of any kind, and for preserving the health of the citizens.—Rev., 2929.

3186. Shall repair streets and bridges.—The board of commissioners shall provide for keeping in proper repair the streets and bridges in the town, in the manner and to the extent they may deem best; may cause such improvements in the town to be made as may be necessary, and may apportion the same equally among the inhabitants, by assessments of labor or otherwise, and the citizens shall not be liable to work on the public roads without the limits of the town. When they determine to repair or improve by labor, they may appoint an overseer and compel such persons as are liable to perform duty on the public roads to work on the streets, in the manner and under the penalties provided in the general law for the reparation of the public roads.—Rev., 2930.

4. Mayor.

3187. How elected; vacancy.—In like manner, and at the same time when commissioners are elected, the voters may by ballot, under the inspection of the same persons and under the same rules and regulations, elect a mayor of the town; and the persons having the highest number of votes shall be declared elected. In case of a vacancy in the office, the commissioners may fill the same.—Rev., 2931.

3188. To take oath of office.—The mayor, before some justice of the peace, or other person authorized by law to administer oaths, shall take and subscribe the oaths prescribed for public officers, and an oath that he will faithfully and impartially discharge the duties imposed upon him by law, which said oath shall be filed with the records of the town and be entered on the same book with the oaths of the commissioners.—Rev., 2932.

3189. Presiding officer at commissioners' meetings; mayor pro tem.—The mayor shall preside at the meetings of the commissioners, but shall have no vote except in case of a tie; and in the event of his absence or sickness, the board of commissioners may appoint one of their number pro tempore, to exercise his duties.—Rev., 2933.

3190. Criminal jurisdiction of.—The mayor of every city or incorporated town is hereby constituted an inferior court, and as such court such mayor shall be a magistrate and conservator of the peace, and within the corporate limits of his city or town shall have the jurisdiction of a justice of the peace in all criminal matters arising under the laws of the state, or under the ordinances of such city or town. The rules of law regulating proceedings before a justice of the peace shall be applicable to proceedings before such mayor, and he shall be entitled to the same fees which are allowed to justices of the peace.—Rev., 2934.

3191. Ordinances and penalties enforced; appeals.—As such court the mayor shall have authority to hear and determine all cases that may arise upon the ordinances of the city or town; to enforce penalties by issuing execution upon any adjudged violation thereof and to execute the laws and rules that may be made and provided by the board of commissioners of said city or town, for the government and regulation of the said city or town, but in all cases any person dissatisfied with the judgment of the mayor, may appeal to the superior court as in case of a judgment rendered by a justice of the peace.—Rev., 2935.

3192. Mayor must certify ordinances on appeal.—In all cases of appeal from a mayor's court to the superior or other court of appeal, when the offense charged is the violation of a town ordinance the mayor shall send with the papers in the case a true copy of the ordinance alleged to have been violated, and shall certify under his hand and seal that said ordinance was in force at the time of the alleged violation of the same.—Rev., 2936.

3193. May sentence to work on streets to pay fine.—In all cases where judgments may be entered up against any person for fines, according to the laws and ordinances of any incorporated town, and the person against whom the same is so adjudged refuses or is unable to pay such judgment, it may and shall be lawful for the mayor before whom such judgment is entered, to order and require such person, so convicted, to work on the streets or other public works, until, at fair rates of wages, such persons shall have worked out the full amount of the judgment and costs of the prosecution; and all sums received for such fines shall be paid into the treasury. No woman shall be worked on the streets.—Rev., 2937.

5. Constable.

3194. To take an oath of office.—The town constable shall, before some person authorized to administer oaths, take and subscribe to the oaths prescribed for public officers, and an oath that he will faithfully and impartially discharge the duties of his office according to law, which said oath shall be filed with the mayor and entered in the book with the oaths of the commissioners.—Rev., 2938.

3195. Power as to process and as peace officer.—As a peace officer, the constable shall have within the town all the powers of a constable in the county; and as a ministerial officer, he shall have power to serve all civil and criminal process that may be directed to him by any court within his county, under the same regulations and penalties as prescribed by law in the case of other constables, and to enforce the ordinances and regulations of the board of commissioners as the board may direct.—Rev., 2939.

3196. Power as tax collector; bond.—The constable shall have the same power to collect the taxes imposed by the commissioners as sheriffs have to collect the taxes imposed by the county commissioners, and he may be required by the commissioners to give bond, with sufficient surety, payable to the State of North Carolina, in such sum as the commissioners may prescribe, to account for the same; upon which suit may be brought by the commissioners, as upon the bonds of other officers. The bond of the constable shall be duly proved, before the mayor and commissioners, and registered in the office of the register of deeds.—Rev., 2940.

6. Officers.

3197. Must be voters in town or city.—No person shall be a mayor, commissioner, intendant of police, alderman or other chief officer of any city or town, unless he shall be a qualified voter therein.—Rev., 2941.

3198. Penalty for refusing to qualify and act.—Every person elected or appointed commissioner, mayor, or town constable, who, after being duly notified shall neglect or refuse to qualify and perform the duties of his office or appointment, shall pay twenty-five dollars, one-half to the use of the town, and the other half to the use of any person who will sue for the same.—Rev., 2942.

3199. Hold over, when.—Whenever the day of election shall be altered, the officers of the corporation elected or appointed before that day, shall hold their places till the day of election, and until other officers shall be elected or appointed and qualified. And they shall hold their offices in like manner, when there is any failure to make the annual election.—Rev., 2943.

7. Elections.

3200. How far this chapter applicable.—All elections held in any city or town shall be held under the following rules and regulations, except in the cities of Charlotte and Fayetteville, and in the town of Shelby, and in the towns and counties of Bertie, Cabarrus, Caldwell, Catawba, Chowan, Columbus, Davidson, Edgecombe, Gaston, Harnett, Lenoir, Mitchell, Nash, Pitt, Randolph, Robeson, Stokes, Surry, Vance, Wayne and Wilson.—Rev., 2944.

3201. When election held.—In all cities and towns an election shall be held on Tuesday after the first Monday of May, one thousand nine hundred and five, and biennially thereafter.—Rev., 2945.

3202. Polling places.—There shall be at least one polling place in each ward in the town or city, if the said town or city is divided into wards; and if not divided into wards, then there shall be as many polling places as may be established by the governing body of said town or city.—Rev., 2946.

3203. Registrars appointed; public notified; vacancy.—The board of commissioners shall select, at least thirty days before any city or town election, one person for each election precinct, who shall act as registrar of voters for such precinct; and shall make publication of the names of the persons so selected, and of the time of the election, at the town or city hall, or at the usual place of holding the mayor's court, immediately after such appointment, and shall cause a notice to be served upon the registrars by the sheriff of the county or the township constable. If any registrar shall die or neglect to perform his duties, said governing body may appoint another in his place.—Rev., 2947.

3204. Registrars to take an oath.—Before entering upon the duties of his office each registrar shall take an oath before some person authorized by law to administer oaths to faithfully perform the duties of his office as registrar.—Rev., 2948.

3205. Registration of voters.—It shall be the duty of the board of commissioners of every city and town to cause a registration to be made of all the qualified voters residing therein, under the rules and regulations prescribed for the registration of voters for general elections. And where there has been a registration of voters, the board of commissioners may, in its discretion, order a new registration of voters; and unless such new registration shall be ordered, the election shall be held under the existing registration, with such revision as is herein provided.—Rev., 2949.

3206. Notice of new registration.—In the event a new registration is ordered the board of commissioners shall give thirty days' notice thereof by advertisement in some newspaper, if there be one published in the town or city, and if there be none so published, then in three public places in the city or town.—Rev., 2951.

3207. Registration books revised.—Each registrar shall be furnished with registration books, and it shall be his duty to revise the registration book of his precinct in such manner that said books shall show an accurate list of the electors previously registered in such ward or precinct or still residing therein, without requiring such electors to be registered anew.—Rev., 2951.

3208. When registration books opened and closed; who may register.—Each registrar shall, between the hours of nine o'clock a. m. and five o'clock p. m. on each day (Sunday excepted) for seven days preceding the day for closing the registration books, as hereinafter provided, keep open said books for the registration of any new electors residing in the precinct, and entitled to register, whose names have never before been registered in such precinct, or do not appear in the revised list. Such books shall be open until nine o'clock p. m. of each Saturday during such registration period and shall be closed for registration on the second Saturday before each election.—Rev., 2952.

3209. Registration on election day.—No registration shall be allowed on the day of election, but if any person shall give satisfactory evidence to the registrar and judges of election that he has become of the age of twenty-one years or otherwise has become qualified to register and vote since the registration books were closed for registration, he shall be allowed to register and vote.—Rev., 2953.

3210. Vacancies on election day.—If any vacancy shall occur on the day of election in the office of registrar, the same shall be filled by the judges of election, and if any vacancy shall occur on that day in the office of judge the same shall be filled by the registrar; vacancies occurring at any other time shall be filled by the board of commissioners.—Rev., 2954.

3211. When books open for challenge.—On the second Saturday before the election the registration books shall be kept open at the polling place in the precinct for the inspection of the electors of the precinct, and any of such electors shall be allowed to object to the name of any person appearing on said books.—Rev., 2955.

3212. Practice in challenges.—When a person is challenged the registrar shall enter upon his books opposite the name of the person objected to the word "Challenged," and the registrar shall appoint a time and place, on or before the Monday immediately preceding election day, when he, together with the judges of election, shall hear and decide the objection, giving personal notice to the voter so objected to; and if for any cause, personal notice can not be given, then it shall be sufficient to leave a copy thereof at his residence. If any person challenged shall be found not duly qualified, the registrar shall erase his name from the books. They shall hear and determine the cause of challenge under the rules and regulations prescribed by the general law regulating elections for members of the general assembly.—Rev., 2956.

3213. Registration books, where deposited.—Immediately after any election the registrars shall deposit the registration books for the respective precincts with the board of commissioners.—Rev., 2957.

3214. Judges of election appointed; oath of.—The board of commissioners shall appoint, at least thirty days before any city or town election, two judges of election, who shall be of different political parties where possible, and shall be men of good character, able to read and write, at each place of holding election in said city or town, who, before entering upon the discharge of their duties, shall take an oath, before some person authorized by law to administer oaths, to conduct the election fairly and impartially, according to the constitution and laws of the state.—Rev., 2958.

3215. Judges superintend election; poll books.—The judges of election shall open the polls and superintend the same until the close of election; they shall keep poll books in which shall be entered the name of every person who shall vote, and at the close of the election they shall certify the same over their proper signatures and deposit them with the board of commissioners.—Rev., 2959.

3216. When polls open and close.—The polls shall be open on the day of election from eight o'clock a. m. till sunset, and no longer; and each person whose name may be registered shall be entitled to vote.—Rev., 2960.

3217. Who may vote.—All qualified electors who shall have resided for four months immediately preceding an election within the limits of any voting precinct of a city or town, and not otherwise, shall have the right to vote in such precinct for mayor and other city or town officers.—Rev., 2961.

3218. Ballots and ballot boxes.—All ballots shall be printed or written upon white paper and shall be of the same size, without device, mutilation or ornamentation, the size of ballots to be fixed by board of commissioners at the same meeting the registrar is appointed. The governing body of the city or town shall provide for each election precinct in their respective cities or towns necessary ballot boxes in which to deposit the ballots; each of such boxes shall have an opening through the lid to admit a single folded ballot, and no more. The ballot boxes shall be kept by the judges of election for the use of election precincts respectively; and the registrar and judges of election, before the voting begins, shall carefully examine the ballot boxes and see that there is nothing in them, and they shall be sealed or securely fastened and not be opened until the polls are closed.—Rev., 2962.

3219. Ballots counted; result declared; void ballots.—When the election shall be finished the registrar and judges of election shall open the boxes and count the ballots, reading aloud the names of the persons which shall appear on each ballot; and if there shall be two or more ballots rolled up together, or any ballot shall contain the names of more persons than the elector has the right to vote for, or shall have a device or ornament upon it, in either of these cases such ballots shall not be numbered in taking the ballots, but shall be void; and the counting of votes shall be continued without adjournment until completed, and the result thereof declared.—Rev., 2963.

3220. Board of canvassers; original returns.—The registrar and judges of election in each voting precinct shall appoint one of their number to attend the meeting of the board of canvassers as a member thereof, and shall deliver to the member who shall have been so appointed the original returns of the result of the election in such precinct; and the members of the board of canvassers who shall have been so appointed shall attend the meeting of the board of canvassers, and shall constitute the board of town canvassers for such election, and a majority of them shall constitute a quorum. In towns where there is only one voting precinct, the registrar and judges of election shall, at the close of the election, declare the result thereof.—Rev., 2964.

3221. When and where board meets; oath.—The board of canvassers shall meet on the next day after the election at twelve o'clock m., at the mayor's office, and they shall each take the oath prescribed in the general law governing elections for members of the board of county canvassers.—Rev., 2965.

3222. Board determines result; tie vote.—The board of canvassers shall, at their meeting, in the presence of such electors as choose to attend, open, canvass and judicially determine the result, and shall make abstracts, stating the number of legal ballots cast in each pre-

cinct for each office, the name of each person voted for and the number of votes given to each person for each different office, and shall sign the same. It shall have power and authority to judicially pass upon all the votes relative to the election and judicially determine and declare the result of the same, and shall have power and authority to send for papers and persons and examine the latter upon oath; and in case of a tie between two opposing candidates, the result shall be determined by lot. In all other respects all elections held in any town or city shall be conducted as prescribed for the election of members of the general assembly.—Rev., 2966.

3223. Notice of special election.—No special election shall be held for any purpose in any county, township, city or town unless at least thirty days' notice shall have been given of the same by advertisement in some newspaper published in said county, city or town, or by advertisement posted at the courthouse of the county and four other public places in such county, city or town.—Rev., 2967.

8. Taxes.

3224. Must be uniform and ad valorem.—All taxes levied by any county, city, town, or township, shall be uniform and ad valorem, upon all property in the same, except property exempted by this constitution.—Rev., 2968.

3225. Tax list taken, by whom; failure to list, pays double tax.—The mayor, or other suitable person, shall, by order of the commissioners, take the list of taxables in the town, in such manner and at such time as the commissioners shall prescribe. If any person fail to list his taxables within the time prescribed by the commissioners, he shall be liable to a double tax.—Rev., 2969.

3226. Tax list corrected.—All tax lists, either county or municipal, which may be placed in the hands of any sheriff or tax collector, shall be at all times under the control of the authorities imposing the tax, and subject to be corrected, or altered by them, and shall be open for inspection by the public, and upon demand by the authorities imposing the tax, or their successors in office, shall be surrendered to the lawful authorities for such inspection or correction.—Rev., 2970.

3227. Dog tax.—If any person residing in a town shall have therein any dog, and shall not return it for taxation, and shall fail to pay the tax according to law, the commissioners, at their option, may collect from the person so failing double tax, or may treat such dog as a nuisance, and order his destruction.—Rev., 2971.

3228. Monthly settlements by tax collector.—Each town and city constable, or any other officer authorized by any town or city to collect taxes, fines or penalties, shall make a monthly settlement of all moneys coming into his hands, with the town treasurer or other officer authorized to receive the same.—Rev., 2972.

3229. Annual statement taxes received and disbursed published.—The commissioners shall annually publish an accurate statement of the taxes levied and collected in the town, together with a statement of the amount expended by them, and for what purpose. And any board of commissioners failing to comply with this section shall forfeit and pay one hundred dollars to any person who will sue for the same.—Rev., 2973.

9. Municipal Debts.

3230. No debt or tax except for necessities, but by vote of people. No county, city, town, or other municipal corporation shall contract any debt, pledge its faith, or loan its credit, nor shall any tax be levied, or collected by any officers of the same, except for the necessary expenses thereof, unless by a vote of the majority of the qualified voters therein.—Rev., 2974.

3231. How paid.—Debts contracted by a municipal corporation in pursuance of authority vested in it, shall not be levied out of any property belonging to such corporation and used by it in the discharge and execution of its corporate duties and trusts, nor out of the property or estate of any individual who may be a member of such corporation or may have property within the limits thereof. But all such debts shall be paid alone by taxation upon subjects properly taxable by such corporation: Provided, that whenever any individual, by his contract, shall become bound for such debt, or any person may become liable therefor by reason of fraud, such person may be subjected to pay said debt.—Rev., 2975.

3232. Taxation of municipal bonds.—All laws and clauses of laws heretofore passed exempting bonds issued by any municipal corporation of the State of North Carolina from state, county or municipal taxation be and the same are hereby repealed: Provided, that nothing herein shall be construed to prevent a municipality from exempting its bonds from its own taxation.—Rev., 2976.

3233. Limited to ten per cent. of assessed values.—It shall be unlawful for any city or town to contract any debt, pledge its faith or loan its credit for the construction of railroads, the support or maintenance of internal improvements or for any special purpose whatsoever, to an extent exceeding in the aggregate ten per cent. of the assessed valuation of the real and personal property situated in such city or town. And the levy of any tax to pay any such indebtedness in excess of this limitation shall be void and of no effect.—Rev., 2977.

10. Municipal Property Sold.

3234. By mayor and commissioners at public sale.—The mayor and commissioners of any town shall have power at all times to sell at public outcry, after thirty days' notice, to the highest bidder, any property, real or personal, belonging to any such town, and apply the proceeds as they may think best.—Rev., 2978.

3235. By county commissioners, when no mayor.—In any town where there is no mayor or commissioners, the board of county commissioners shall have the power given in the preceding section.—Rev., 2979.

3236. Title made by mayor.—The mayor of any town, or the chairman of any board of commissioners, of any town or county, is fully authorized to make title to the purchaser of any property sold under this chapter.—Rev., 2980.

11. Regulation of Buildings.

3237. Chief of fire department appointed, how; remuneration.—It shall be the duty of the insurance commissioner to notify every city and incorporated town where there is no chief of fire department to appoint said officer at once, and it shall be also his duty to see that said officer in every city and incorporated town is reasonably remunerated by said city or town for the services required of him by law. Nothing herein shall prevent any person appointed hereunder from holding some other position in the government of said city or town.—Rev., 2981.

Note.—Failure to comply with this section a misdemeanor, see s. 3607 of Revisal.

3238. Chief of fire department, local inspector of buildings; must make reports; local inspectors appointed.—The chiefs of fire departments hereinbefore provided for shall also be local inspectors of buildings for the cities or towns for which they are appointed and shall perform the duties required herein and shall make all reports required by the insurance commissioner, and shall make all inspections and perform such duties as may be required by the said insurance com-

missioner: Provided, however, that any city or town may appoint and reasonably remunerate a local inspector of buildings, in which case the chief of fire department shall be relieved of the duties herein imposed.—Rev., 2982.

Note.—Failure to perform duties a misdemeanor, see s. 3610 of Revisal.

3239. Electrical inspectors.—The board of aldermen or commissioners of any incorporated city or town may in their discretion appoint an electrical inspector in addition to the building inspector, and when said electrical inspector is so appointed he shall do and perform all things herein set out for the building inspector to do and perform in regard to electrical wiring and certificates for same, and in such cases the building inspector shall be relieved of such duties.—Rev., 2983.

3240. Deputy inspector may perform duties.—All duties imposed by this subchapter upon the building inspector may be performed by a deputy appointed by such inspector.—Rev., 2984.

3241. Fire limits established.—The board of aldermen or the board of commissioners of all incorporated cities and towns shall pass ordinances establishing and defining fire limits, which shall include the principal business portion of the cities and towns.—Rev., 2985.

Note.—Failure to comply with this section a misdemeanor, see s. 3608 of Revisal.

3242. Building permits required; how obtained; inspections.—Before a building is begun the owner of the property shall apply to the inspector for a permit to build. This permit shall be given in writing and shall contain a provision that the building shall be constructed according to the requirements of the building law, a copy of which shall accompany the permit. As the building progresses the inspector shall make as many inspections as may be necessary to satisfy him that the building is being constructed according to the provisions of this law. As soon as the building is completed the owner shall notify the inspector, who shall proceed at once to inspect the said building and determine whether or not the flues and the building are properly constructed in accordance with the building law. If the building meets the requirements of the building law the inspector shall then issue to the owner of the building a certificate which shall state that he has complied with the requirements of the building law as to that particular building, giving description and locality and street number if numbered. The inspector shall keep his record so that it will show readily by reference all such buildings as are approved. The inspector shall report to the insurance commissioner every person neglecting to secure such permit and certificate.—Rev., 2986.

3243. Walls of buildings, how constructed.—The walls of all buildings in cities or towns where this subchapter applies, other than frame or wooden buildings, shall be constructed of brick, iron or other hard, incombustible material, and all regulations contained in the law shall apply also where walls or buildings are raised, altered or repaired.—Rev., 2987.

3244. Frame buildings not erected in fire limits.—Within the fire limits of cities and towns where this subchapter applies, as established and defined, no frame or wooden building shall be hereafter erected.—Rev., 2988.

3245. Thickness of walls.—The walls of warehouses, stores, factories, livery-stables, hotels or other brick or stone buildings for business purposes in cities or towns where this subchapter applies, except fire-proof buildings where the framework is of steel, shall conform to the following schedules:

Height of Building.	Minimum Thickness in Inches of Wall.				
	1st	2d	3d	4th	5th
One-story building	13	13	13	13	13
Two-story building	17	17	17	17	17
Three-story building	17	17	17	17	17
Four-story building	22	17	17	17	17
Five-story building	26	22	17	17	17

The walls of all brick or stone buildings over five stories high shall be thirteen inches thick for the top story and increasing four inches in thickness for each story below to the ground, the increased thickness of each story to be utilized for beam and girder ledges. All top story walls must extend through and eighteen inches above the roof in parapets not less than thirteen inches thick and coped with terra-cotta, stone, cast-iron or cement. The roof of all buildings named in this section shall be of metal, slate or tile or gravel or other standard fire-proof roofing.—Rev., 2989.

3246. Foundation of walls; openings in walls; how doors protected.

—In all buildings mentioned in the preceding section there shall be prepared a proper and substantial foundation, and no foundation shall be less than one foot below the exposed surface of the ground, and no foundation shall rest on any filling or made ground, and the breadth of the foundation of the several parts of any building shall be proportioned so that as near as practicable the pressure shall be equal on each square foot of the foundation, and cement mortar shall be used in the masonry of all foundations exposed to dampness. No opening or doorway shall be cut through a party or fire wall of a brick or stone building without a permit from the inspector, and every such door or opening shall have top, bottom and sides of stone, brick or iron, shall be closed by two sets of standard metal-covered doors (separated by the thickness of the wall) hung to rabbetted iron frames or to iron hinges in brick or stone rabbets, shall not exceed ten feet in height by eight feet in width, and every opening other than a doorway shall be protected in a manner satisfactory to the inspector.—Rev., 2990.

3247. Metallic stand-pipes on what buildings.—All business buildings being more than fifty-six feet high, covering an area of more than five thousand superficial feet, also all buildings exceeding eighty feet in height, shall have a four-inch or larger metallic stand-pipe within or near the front wall extending above the roof and arranged so that engine hose can be attached from the street, such riser to have two and one-half-inch hose coupling on each floor. All hose coupling shall conform to the size and pattern adopted by the fire department.—Rev., 2991.

3248. Joists; how entered in walls.—The end of joists or beams entering a brick wall shall be cut not less than three-inch bevel so as not to disturb the brickwork by any deflection or breaking of the joists or beams. All such joists or timbers entering a party or division wall from opposite sides shall have at least four inches of solid brickwork between the ends of such timbers or joists.—Rev., 2992.

3249. Chimneys and flues.—All fireplaces and chimneys in stone or brick walls in any building hereafter erected and any chimneys or flues hereafter altered or repaired shall have the joints struck smooth on the inside, and the firebacks of all fireplaces hereafter erected shall be not less than eight inches in thickness of solid masonry, the chimney walls to be not less than four inches thick, the top of the chimney to extend not less than five feet above the roof for flat roofs and two feet above the ridge of any pitched roof. No woodwork or timber shall be placed under any fireplace or under the brickwork of

any chimney. All floor beams, joists and headers shall be kept at least two inches clear of any wall enclosing a fire flue or chimney breast.—Rev., 2993.

3250. Chimneys not built on wood.—No chimney shall be started or built upon a beam of wood or floor, the brickwork in all cases to start from the ground with proper foundation. In no case shall a chimney be corbeled out more than three inches from the wall, and in all cases corbeling shall consist of at least five courses of brick, the corbeling to start at least three feet below the bottom of the flue.—Rev., 2994.

3251. Flues; how constructed.—All flues shall extend at least three feet above the roof and always above the comb of the roof, and shall be coped with well-burnt terra-cotta, stone, cast-iron or cement. In all buildings hereafter erected the stone or brick work of all flues and the chimney shafts of all furnaces, boilers, baker's ovens, large cooking ranges and laundry stoves and all flues used for similar purposes shall be at least eight inches in thickness, with the exception of smoke flues, which are lined with fire-clay lining or cast iron. These may be four inches in thickness, but this shall not apply to metal stacks of boiler-houses where properly constructed and arranged at a safe distance from wood or other inflammable material. All buildings hereafter erected shall have smoke flues constructed either in walls of eight inches thickness or with smoke flues lined with cast-iron or fire-clay lining, the walls of which may be four inches in thickness, the lining to commence at the bottom of the flue or at the throat of the fireplace and carried up continuously the entire height of the flue. All joints shall be closely fitted and the lining shall be built in as the flue or flues are carried up. All chimneys which shall be dangerous in any manner whatever shall be repaired and made safe or taken down.—Rev., 2995.

3252. Hanging flues.—Hanging flues, that is, for the reception of stovepipes built otherwise than from the ground) shall be allowed only when built according to the following specifications: The flue shall be built four inches thick of the best hard brick, laid on flat side, never on edge, extending at least three feet above the roof and always above the comb of the roof, lined on the inside with cast-iron or fire-clay flue lining from the bottom of the flue to the extreme height of the flue, and ends of all such lining pipes being made to fit close together and the lining pipe being built in as the flue is carried up. If the flue starts at the ceiling and receives the stovepipe vertically it shall be hung on iron stirrups, bent to come flush with the bottom of ceiling joints. Flues not lined as above shall be built from the ground eight inches thick of the best hard brick with the joints struck smooth on the inside.—Rev., 2996.

3253. Flues cleaned on completion of building.—The flues of every building shall be properly cleaned and all rubbish removed and the flues left smooth on the inside upon the completion of the building.—Rev., 2997.

3254. No stovepipe to pass through wood; penalty for violation of this section.—No stovepipe shall pass through any roof, window or weatherboarding, and no stovepipe in any building with wood or combustible floors, ceiling or partitions shall enter any flue unless such pipe shall be at least twelve inches from such floors, ceiling or partitions, unless same is properly protected by metal shield, in which case the distance shall not be less than six inches. In all cases where stovepipes pass through wooden partitions of any kind or other wood-work they shall be guarded by either a double collar of metal with at least three inches air space and holes for ventilation or by a soapstone or burnt-clay ring not less than one inch in thickness extending through

the partition or other woodwork. If any chimney, flue or heating apparatus on any premises shall, in the opinion of the inspector, endanger the premises, the inspector shall at once notify in writing the owner or agent of said premises. If such owner or agent fails for a period of forty-eight hours after the service of said notice upon him to make such chimney, flue or heating apparatus safe he shall be liable to a fine as prescribed in this subchapter.—Rev., 2998.

3255. Height of chimneys for foundries.—Iron cupola or other chimneys for foundries shall extend at least ten feet above the highest point of any roof within a radius of fifty feet of such cupola or chimney.—Rev., 2999.

3256. Steam pipes not placed within two inches of wood.—No steam pipes shall be placed within two inches of any timber or woodwork unless the timber or woodwork is protected by a metal shield; then the distance shall not be less than one inch. All steam pipes passing through floors and ceilings or laths and plastered partitions shall be protected by a metal tube one inch larger in diameter than the pipe, and the space shall be filled in with mineral wool, asbestos or other incombustible material.—Rev., 3000.

3257. Electric wiring of houses, how done; fees for inspection.—The electric wiring of houses or buildings for lighting or for other purposes shall conform to the regulations prescribed by the organization known as National Board of Fire Underwriters. In order to protect the property of citizens from the dangers incident to defective electric wiring of buildings, it shall be unlawful for any firm or corporation to allow any electric current for the purpose of illuminating any building belonging to any person, firm or corporation to be turned on without first having had an inspection made of the wiring by the building inspector and having received from the inspector a certificate approving the wiring of such building. It shall be unlawful for any person, firm or corporation engaged in the business of selling electricity to furnish any electric current for use for illuminating purposes in any building or buildings of any person, firm or corporation, unless the said building or buildings have been first inspected by the inspector of buildings and a certificate given as above provided. The fee that shall be allowed said inspector of buildings for the work of such inspection of electrical wiring shall be one dollar for each building inspected, to be paid by the person applying for the inspection. Provided, that the fees for such inspection in the town of Graham, Alameda county, shall be fifty cents for each building of three rooms or less and ten cents addition for each room in excess of three.—Rev., 3001; Laws 1907, c. 673.

3258. Quarterly inspection of buildings.—Once in every three months the local inspector of buildings shall make a personal inspection of every building within the fire limits, and shall especially inspect the basement and garret, and he shall make such other inspections as may be required by the insurance commissioner and shall report to the insurance commissioner all defects found by him in any building upon a blank furnished him by the insurance commissioner.—Rev., 3002.

3259. Annual inspection of buildings.—At least once in each and every year the local inspector shall make a general inspection of all buildings in the corporate limits and ascertain if the provisions of this subchapter are complied with, and the local inspector alone or with the insurance commissioner or his deputy shall at all times have the right to enter any dwelling, store or other building and premises to inspect same without molestation from any one.—Rev., 3003.

3260. Records of local inspectors.—The local inspector shall keep the following record: A book indexed and kept so that it will show readily by reference all such buildings as are approved; that is, name

and residence of owner, location of building, how it is to be occupied, date of inspection, what defects found and when remedied and date of building certificate; also a record which shall show the date of every general inspection, defects discovered and when remedied; also a record which shall show the date, circumstances and origin of every fire that occurs, name of owner and occupant of the building in which fire originates, the kind and value of property destroyed or damaged; also a record of inspection of electrical wiring and certificate issued.—Rev., 3004.

3261. Reports of local inspectors.—The local inspector shall report before the fifteenth of May of each and every year the number and dates of general and quarterly inspections during the year ending the first day of April upon blanks furnished by the insurance commissioner, and furnish such other information and make such other reports as shall be called for by the insurance commissioner.—Rev., 3005.

3262. Fees of inspector.—For every new building inspected the local inspector shall charge and collect an inspection fee before issuing the building certificate as follows: Two dollars for each mercantile store-room, livery-stable or building for manufacturing of one story and fifty cents for each additional story, and for other buildings twenty-five cents per room: Provided, the inspection fee shall in no case exceed five dollars: Provided, that the fees for such inspection, in the town of Graham, Alamance county, shall be fifty cents for each mercantile store-room, livery-stable, or building for manufacturing, of one story, and twenty-five cents for each additional story, and for other buildings ten cents per room: Provided further, the inspection fee shall in no case exceed two dollars.—Rev., 3006; Laws 1907, c. 673.

3263. Ashes, etc., how cared for.—Ashes shall be removed in metal vessels, and unless moved by city drays shall be stowed in brick, stone or metal receptacle or removed by owner to a place not less than fifteen feet from any wooden building or fence. Oily rags and waste shall be kept in closed metal vessels and shall be removed from building daily. Unslacked lime shall not be left exposed to the weather in or near a building. Stoves or ranges shall not be nearer to unprotected woodwork than two feet and the floors under them shall be protected by metal or sand box.—Rev., 3007.

3264. Ordinances not repealed; ordinances passed to enforce the law.—No provision of this subchapter shall be held to repeal the power of any incorporated city or town to make and enforce any further rules and regulations under the powers granted in their several charters, and said cities and towns may pass ordinances for the enforcement of any provision of this subchapter.—Rev., 3008.

3265. Defects in buildings corrected.—Whenever the local inspector finds any defects in any new building, or finds that said building is not being constructed, or has not been constructed in accordance with the provisions of this law, it shall be his duty to notify the owner of said building of the defects or the failure to comply with this law, and the said owner or builder shall immediately remedy the defect and make the said building comply with the law. The owner or builder may appeal from the decision of the local inspector to the insurance commissioner.—Rev., 3009.

3266. Unsafe buildings condemned.—Every building which shall appear to the inspector to be especially dangerous in case of fire by reason of the bad condition of walls, overloaded floors, defective construction, decay or other causes shall be held to be unsafe, and the inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of said building. No building now or hereafter built shall be altered until it has been examined and approved by the inspector as being in a good and safe condi-

tion to be altered as proposed, and the alteration so made shall conform to the provisions of the law.—Rev., 3010.

3267. To what towns applies; how towns exempted; discrimination by insurance companies.—This subchapter shall apply only to incorporated cities and towns of over one thousand inhabitants, according to any last United States census. It shall be the duty of the insurance commissioner to send copies of this subchapter to the mayor and chief of the fire department of every city or town affected thereby, and the board of aldermen or commissioners of every such city or town may, before the first day of July, one thousand nine hundred and five, by resolution, exempt such city or town from the operation of this subchapter. Before passing such exempting resolution the said board shall give the insurance commissioner fifteen days' notice of its intention to so exempt such city or town. After the passage of such resolution and filing of a copy thereof with the insurance commissioner such city or town shall be fully and in all respects exempt from the operation of this subchapter. The insurance commissioner shall cause a certified copy of this subchapter to be mailed to the mayor or chief officer of every city or town in this state to which it may apply within thirty days after its ratification, and it shall be unlawful for any insurance company to make any discrimination in rates or otherwise against any city or town which shall exempt itself from the provisions of this subchapter.—Rev., 3011.

CHAPTER LXVIII.

TRADEMARKS.

I. Generally.

3268. Trademarks, labels, etc., filed for registry.—It shall be lawful for any person to adopt for his protection and file for registry, as in this chapter provided, any label, trademark, term or design that has been used or is intended to be used for the purpose of designating, making known or distinguishing any goods, wares, merchandise or products of labor that have been or may be wholly or partly made, manufactured, produced, prepared, packed or put on sale by any such person, or to or upon which any work or labor has been applied or expended by any such person, or by any member of any corporation that has adopted and filed for registry any such label, trademark, term or design as aforesaid, or announcing or indicating that the same have been made in whole or in part by any such person or corporation, or by any member thereof.—Rev., 3012.

3269. Property rights protected by filing for registry.—Whenever any person shall adopt and file for registry any label, trademark, term or design pursuant to the provisions of this chapter, the property, privileges, rights, remedies and interests in and to any such label, trademark, term or design, and in and to the use of same, provided or given by this chapter to, or otherwise conferred upon or enjoyed by, the person filing the same for the registry, shall be fully and completely secured, preserved and protected as the property of those entitled to the same before any such label, trademark, term or design has been actually applied to any goods, wares, merchandise, or product of labor, and put upon the market for sale or otherwise, and before any use or appropriation of any such label, trademark, term or design has been made in connection with any such goods, wares, merchandise or product of labor, as well as after the same has been used or applied to designate, make known or distinguish any such goods, wares, merchandise or product of labor and they have been put upon the market.—Rev., 3013.

3270. Filed with secretary of state; affidavit; fees.—Any person who has heretofore adopted and used, or shall hereafter adopt and use any label, trademark, term or design, as in this chapter provided, may file the same for registry in the office of the secretary of state, by leaving two copies, fac similes or counterparts thereof, with the said secretary, and filing therewith a statement in the form of an affidavit, subscribed and sworn to by any such person, or by any officer, agent or attorney if a corporation, specifying the person by whom any such label, trademark, term or design is filed, and the class or character of the goods, wares, merchandise or products of labor to which the same has been, or is intended to be appropriated or applied, and that the person so filing the same has the right to the use of the said label, trademark, term or design, and that no other person, firm or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as may be calculated to deceive, without the permission or authority of the person filing the same, and that the copies, fac similes or counterparts filed therewith, are true and correct copies, fac similes or counterparts of the genuine label, trademark, term or design of the person filing the same, and there be paid for such registry a fee of one dollar to the secretary of state for the use of the state, and the same recording fees required by law for recording certificate of organization of corporations.—Rev., 3014.

3271. Registration; certified copies evidence; fees.—The secretary of state, upon the filing of any such label, trademark, term or design, that is not in conflict with the next section, shall register the same, and shall deliver to the person filing the same as many certified copies thereof, with his certificate of such registry, as any such person may request, and for every such copy and certificate there shall be paid to the secretary of state, for the use of the state, a fee of one dollar; and any such certified copy and certificate shall be admissible in evidence and competent and sufficient proof of the adoption, filing and registry of any such label, trademark, term or design, by any such person in any action or judicial proceeding in any of the courts of this state, and of due compliance with the provisions of this chapter.—Rev., 3015.

3272. How transferred.—The right to use any registered label, trademark, term or design shall be granted only by an instrument in writing, duly filed in the office of the secretary of state. The fees for recording or filing such transfer and issuing copies thereof shall be the same as for filing such label, trademark, term or design.—Rev., 3016.

3273. Similar trademarks refused registration.—It shall not be lawful for the secretary of state to register for any person any label, trademark, term or design that is in the identical form of any other label, trademark, term or design theretofore filed by any other person, or that bears any such near resemblance thereto as may be calculated to deceive, or that would be liable to be mistaken therefor.—Rev., 3017.

3274. Penalty for securing fraudulent registration.—Any person who shall file or procure the filing and registry of any label, trademark, term or design in the office of the secretary of state under the provisions of this chapter, by making any false or fraudulent representations or declarations, with fraudulent intent, shall be liable to pay any damages sustained in consequence of any such registry, to be recovered by or in behalf of the party injured thereby.—Rev., 3018.

3275. Use of counterfeit trademarks unlawful.—Whenever any person has adopted and filed for registry any label, trademark, term or design, as provided by law, and the same shall have been registered pursuant to law, it shall be unlawful for any other person to manu-

facture, use, sell, offer for sale, or in any way utter or circulate any counterfeit or imitation of any such label, trademark, term or design, or have in possession, with intent that the same shall be sold or disposed of, any goods, wares, merchandise or product of labor to which or on which any counterfeit or imitation of any such label, trademark, term or design is attached, affixed, printed, stamped, impressed or displayed, or to sell or dispose of, or offer to sell or dispose of, or have in possession with intent that the same shall be sold or disposed of, any goods, wares, merchandise, or product of labor contained in any box, case, can or package to which or on which any such counterfeit or imitation is attached, affixed, printed, stamped, impressed or displayed.—Rev., 3019.

3276. Unauthorized use unlawful; use under license.—Whenever any person has adopted and registered any label, trademark, term or design, as provided by law, it shall be unlawful for any other person to make any use, sale, offer for sale or display of the genuine label, trademark, term or design of any such person filing the same, or to have any such genuine label, trademark, term or design in possession with intent that the same shall be used, sold, offered for sale, or displayed, or that the same shall be applied, attached or displayed in any manner whatever to or on any goods, wares or merchandise, or to sell, offer to sell, or dispose of, or have in possession with intent that the same shall be sold or disposed of, any goods, wares or merchandise in any box, case, can or package to or on which any such genuine label, trademark, term or design of any such person is attached, affixed, or displayed, or to make any use whatever of any such genuine label, trademark, term or design, without first obtaining in every such case the license of the person adopting, filing and registering the same; and any such license may be revoked and terminated at any time upon notice, and thereafter any use thereof shall be unlawful.—Rev., 3020.

3277. Remedies; damages; profits; destruction of counterfeits.—Any person who has registered any label, trademark, term or design under the provisions of this chapter shall have a right of action against any person for the unauthorized use of such label, trademark, term or design, and the courts shall by appropriate remedies prevent the unauthorized or unlawful use, manufacture or display of any label, trademark, term or design, or the imitation or counterfeit thereof, or the sale, disposal or display of any articles of property on which any counterfeit or imitation of any registered label, trademark, term or design, or on which any genuine label, trademark, term or design may be used or displayed without proper authority; and shall further secure and protect all persons in all rights of property and interest which they may have in any label, trademark, term or design registered under this chapter; and the court shall award to the plaintiff any and all damages resulting from any such wrongful use of any such label, trademark term or design; and any counterfeit or imitation of any labels, trademarks, terms or designs and any die, engraving, mould or mechanical device or the manufacture of the same in the possession or under the control of the defendant, shall be delivered up to an officer of the court, to be destroyed, and that any such genuine labels, trademarks, terms or designs, in the possession or under the control of any such defendant shall be delivered to the plaintiff.—Rev., 3021.

3278. Additional penalty.—In addition to any other rights remedies or penalties provided by this chapter, and as concurrent therewith, any person who shall violate any of the provisions of this chapter shall be liable to a penalty of two hundred dollars, to be recovered by any person who has filed any such label, trademark, term or design.—Rev., 3022.

2. Timber.

3279. Who may adopt.—Any person dealing in timber in any form shall be known as a timber dealer, and as such may adopt a trademark, in the manner and with the effect in this subchapter provided.—Rev., 3023.

3280. How adopted, registered and published.—Every such dealer desiring to adopt a trademark may do so by the execution of a writing in form and effect as follows:

TRADEMARK.

Notice is hereby given that I (or we, etc., as the case may be) have adopted the following trademark, to be used in my (or our, etc.) business as timber dealer (or dealers), to-wit: (Here insert the words, letters, figures, etc., constituting the trademark, or if it be any device other than words, letters or figures, insert a fac simile thereof).

Dated this day of, 19.... A..... B.....

Such writing shall be acknowledged or proved for record in the same manner as deeds are acknowledged or proved, and shall be registered in the office of the register of deeds of the county in which the principal office or place of business of such timber dealer may be, in a book to be kept for that purpose marked "Registry of Timber Marks," also in office of secretary of state, and a copy thereof shall be published at least once in each week for four successive weeks in some newspaper printed in such county, or if there be no such newspaper printed therein, then in some newspaper of general circulation in such county.—Rev., 3024.

3281. Property in; how used.—Every trademark so adopted shall, from the date thereof, be the exclusive property of the person adopting the same. The proprietor of such trademark shall, in using the same, cause it to be plainly stamped, branded or otherwise impressed upon each piece of timber upon which the same is placed.—Rev., 3025.

3282. Branding with, effect of.—When timber is purchased by the proprietor of any such trademark, and the said trademark is placed thereon as hereinbefore provided, such timber shall thenceforth be deemed the property of such purchaser, without any other or further delivery thereof, and such timber shall thereafter be at the risk of the purchaser, unless otherwise provided by contract in writing between the parties.—Rev., 3026.

3283. Branding with, evidence of ownership.—In any action, suit or contest, in which the title to any timber, upon which any trademark has been placed as aforesaid, shall come in question, it shall be presumed that such timber was the property of the proprietor of such trademark, in the absence of satisfactory proof to the contrary.—Rev., 3027.

Note.—For unlawful use of timber trademark, see ss. 3854, 3856 of Revisal.
For buying branded logs, see s. 3853 of Revisal.

3. Live Stock.

3284. Owners of stock to register brand or mark.—Every person who hath any horses, cattle, hogs or sheep may have an earmark or brand different from the earmark or brand of all other persons, which he shall record with the clerk of the board of commissioners of the county where his horses, cattle, hogs or sheep are; and he may brand all horses eighteen months old and upwards with the said brand, and earmark all his hogs and sheep six months old and upwards with the said earmark; and earmark or brand all his cattle twelve months old and upwards; and if any dispute shall arise about any earmark or brand, the same shall be decided by the record thereof.—Rev., 3028.

Note.—For protection to bottlers, see "Crimes."

CHAPTER LXIX.

WAREHOUSEMEN.

1. Public Warehousemen.

3285. Who may become.—Any corporation organized under the laws of this state and whose charter authorizes it to engage in the business of a warehouseman, may become a public warehouseman and authorized to keep and maintain public warehouses for the storage of cotton, goods, wares and other merchandise as hereinafter prescribed and upon giving the bond hereinafter required.—Rev., 3029.

3286. Bond to clerk of court; penal sum.—Every such corporation so organized under the preceding section, except such as shall have a capital stock of not less than five thousand dollars, to become a public warehouseman shall give bond in a reliable bonding or surety company payable to the state of North Carolina in an amount not less than ten thousand dollars, to be approved, filed with and recorded by the clerk of the superior court of the county in which the warehouse is located, for the faithful performance of the duties of a public warehouseman; but if such corporation has a capital stock of not less than five thousand dollars, then it shall not be required to give the bond mentioned in this section.—Rev., 3030.

3287. Injured person may sue on bond.—Whenever such warehouseman fails to perform any duty or violates any of the provisions of this chapter, any person injured by such failure or violation may bring an action in his name and to his own use in any court of competent jurisdiction on the bond of said warehouseman.—Rev., 3031.

3288. Insurance on stored property; storage receipts.—Every such warehouseman shall, when requested thereto in writing by a party placing property with it on storage, cause such property to be insured; every such warehouseman shall, except as hereinafter provided, give to each person depositing property with it for storage a receipt therefor, which shall be negotiable in form and shall describe the property, distinctly stating the brand or distinguishing marks upon it, and if such property is grain, the quantity and inspected grade thereof. The receipts shall also state the rate of charges for storing the property and amount and rate of any other charge thereon, and also the amount of the bond and name of the company in which the bond is taken, given to the said clerk of the court as hereinabove provided: Provided, that every such warehouseman shall, upon request of any person depositing property with it for storage, give to such person its non-negotiable receipt therefor, which receipt shall have the words "Non-negotiable" plainly written, printed or stamped on the face thereof; and provided, that the assignment of said non-negotiable receipt shall not be effective until recorded on the books of the warehouseman issuing it. All warehouse receipts issued by warehousemen complying with the provisions of this chapter shall be valid and binding in the hands of all bona fide holders for value without registration.—Rev., 3032.

3289. Title passes with storage receipt.—The title to cotton, goods, merchandise and chattels stored in public warehouses shall pass to a purchaser or pledgee by the endorsement and delivery to him of the warehouseman's receipt therefor, signed by the person to whom such receipt was originally given or by the endorsee of such receipt, unless such receipt is non-negotiable.—Rev., 3033.

3290. Title when goods are mixed.—When grain or other property is stored in public warehouses in such manner that different lots or parcels are mixed together, or that the identity can not be accurately preserved, the warehouseman's receipt for any such portion of grain or property shall be deemed a valid title to so much thereof as is desig-

nated in receipt without regard to separation or identification.—Rev., 3034.

3291. Books of account kept; open for inspection.—Every such warehouseman shall keep a book in which shall be entered an account of all its transactions relating to warehousing, storing and insuring cotton, goods, wares and merchandise, and to the issuing of receipts therefor, which books shall be open to the inspection of any person actually interested in the property to which such entry relates.—Rev., 3035.

3292. Sale of property for storage charges one year overdue; proceeds; notice of sale.—Every such public warehouseman which shall have in its possession any property by virtue of any agreement or warehouse receipt for the same, for which a claim for storage is at least one year overdue, may proceed to sell the same at public auction, and out of the proceeds may retain all charges for storage of such goods, wares and merchandise, and any advances that may have been made thereon by it, and the expense of advertising and sale thereof, but no sale shall be made until after the giving a printed or written notice of such sale to the person in whose name the said goods, wares and merchandise were stored, requiring him, naming him, to pay the arrears or amount due for such storage, and in case of default in so doing, the goods, wares and merchandise shall be sold to pay the same, at a time and place to be specified in such notice.—Rev., 3036.

3293. Notice, how served; return of; publication.—The notice required in the preceding section shall be served by delivering it to the person in whose name such goods, wares and merchandise were stored, or by leaving it at his usual place of abode, if within this state, at least thirty days before the time of sale, and a return of the service shall be made by some officer authorized to serve civil process, or by some other person, with an affidavit of the truth of the return. If the party storing such goods can not with reasonable diligence be found within this state, then such notice shall be given by publication once each week for two successive weeks, the last publication to be at least ten days before the time of such sale, in a newspaper published in the city or town where such warehouse is located. In the event that the party storing such goods shall have parted with the same, and the purchaser shall have notified the warehouseman with his address, such notice shall be given to such person in lieu of the person storing the goods.—Rev., 3037.

3294. Surplus disposed of.—Every such warehouseman shall make an entry in a book kept for that purpose of the amount of the proceeds of all sales, and any balance shall be paid over to the person entitled thereto on demand. If such balance is not demanded by the owner within six months after such sale, it shall be paid by said warehouseman to the clerk of the court of the county in which said warehouse is located, and he shall pay the same to the party entitled thereto, if demanded within ten years after said sale; and such warehouseman shall at the same time file with said clerk an affidavit in which shall be stated the name and place of residence of the party entitled thereto so far as the same are known.—Rev., 3038.

3295. When perishable or dangerous property is stored; proceeds of sale paid to clerk, when.—Whenever a public warehouseman has in its possession any property of a perishable nature, or which will deteriorate greatly in value by keeping, or upon which the charges for storage will be likely to exceed the value thereof, or which by its odor, leakage, inflammability or explosive nature is likely to injure other goods, such property having been stored upon non-negotiable receipts, and when the warehouseman has notified the person in whose name the property was received to remove such property and such person has refused or omitted to remove the property and to pay the storage

and proper charges thereon, the public warehouseman may, in the exercise of a reasonable discretion, sell the same at public or private sale without advertising, and the proceeds, if there are any, after deducting the amount of said storage and charges, and expense of sale, shall be paid or credited to the person in whose name the property was stored, and if said person can not be found on reasonable inquiry, the sale may be made without any notice and the proceeds of such sale, after deducting the amount of storage or expense of sale, shall be paid to the clerk of the court of the county wherein said warehouse is situated, who shall pay the same to the person entitled thereto, if called for or claimed by the rightful owner within five years of the receipt thereof by said clerk.—Rev., 3039.

3296. When unable to sell perishable or worthless property.—Whenever a public warehouseman under the provisions of the preceding section has made a reasonable effort to sell perishable and worthless property, and has been unable to do so, because of its being of little or no value, it may then proceed to dispose of such property in any lawful manner, and it shall not be liable in any way for the property so disposed of.—Rev., 3040.

3297. Storer liable for charges, when.—Whenever a public warehouseman under the provisions of the two preceding sections has sold or otherwise disposed of property and the proceeds thereof have not been sufficient to pay the expenses of sale, storage, and other charges against said property, then the person in whose name said property was stored shall be liable to said public warehouseman for such deficit.—Rev., 3041.

Note.—Person disposing of stored goods unlawful, see s. 3831 of Revisal.

2. Tobacco Warehouse Charges.

3298. Maximum charges fixed.—The charges and expenses of handling and selling leaf tobacco upon the floor of tobacco warehouses shall not exceed the following schedule of prices, viz.: For auction fees, fifteen cents on all piles of one hundred pounds or less, and twenty-five cents on all piles over one hundred pounds; for weighing and handling, ten cents per pile for all piles less than one hundred pounds, for all piles over one hundred pounds at the rate of ten cents per hundred pounds; for commissions on the gross sales of leaf tobacco in said warehouses not to exceed two and one-half per centum.—Rev., 3042.

3299. Weighers sworn.—All leaf tobacco sold upon the floor of any tobacco warehouse shall first be weighed by some reliable person, who shall have first sworn and subscribed to the following oath, to-wit: "I do solemnly swear (or affirm) that I will correctly and accurately weigh all tobacco offered for sale at the warehouse of, and correctly test and keep accurate the scales upon which the tobacco so offered for sale is weighed." Such oath shall be filed in the office of the clerk of the superior court of the county in which said warehouse is situated.—Rev., 3043.

3300. Bill of charges rendered; penalty.—The proprietor of each and every warehouse shall render to each seller of tobacco at his warehouse a bill plainly stating the amount charged for weighing and handling, the amounts charged for auction fees, and the commission charged on such sale, and it shall be unlawful for any other charges or fees to be made or accepted. For each and every violation of the provisions of this subchapter a penalty of ten dollars may be recovered by any one injured thereby.—Rev., 3044.

3301. Leaf tobacco warehousemen required to keep and furnish certain statistics.—See chapter on "Crimes," subchapter on "Sales," section 801 infra. Laws 1907, c. 77.

CHAPTER LXX.

WATER SUPPLIES.

1. Protection of Watersheds.

3302. Inspection of.—Any waterworks that derive their supply from lakes or ponds or from small streams not more than fifteen miles in length, shall have a sanitary inspection of the entire watershed not less, under any circumstances, than once every three calendar months, and a sanitary inspection of any particular locality on said watershed at least once in each calendar month, whenever in the opinion of the board of health of the city or town to which the water is supplied, or when there is no such local board of health, in the opinion of the county superintendent of health, or, in the opinion of the state board of health, there is reason to apprehend the infection of the water in that particular locality. Such companies or municipal corporation shall cause to be made a sanitary inspection of any particular locality on said watershed at least once in each week, whenever in the opinion of the board of health of the city or town to which the water is supplied, or when there is no such local board of health, in the opinion of the county superintendent of health, or in the opinion of the state board of health, there is special reason to apprehend the infection of the water from that particular locality by the germs of typhoid fever or cholera. The inspection of the entire watershed, as herein provided for, shall include a particular examination of the premises of every inhabited house of the watershed and in passing from house to house a general inspection for dead bodies of animals or accumulation of filth. It is not intended that the term "entire watershed" shall include uninhabited fields and wooded tracts that are free from suspicion. The inspection shall be made by an employee of, and at the expense of said water company or municipal corporation, in accordance with reasonable instructions as to method, to be furnished by the secretary of the state board of health. The said sanitary inspector shall give in person to the head of each household on said watershed, or in his absence to some member of said household, the necessary directions for the proper sanitary care of his premises. It shall further be the duty of said inspector to deliver to each family residing on the watershed such literature on pertinent sanitary subjects as may be supplied him by the municipal health officer or by the secretary of the state board of health.—Rev., 3045.

3303. Rivers and large creeks inspected fifteen miles.—In case of those companies obtaining their supply of water from rivers or large creeks having a minimum daily flow of ten million gallons the provisions of the preceding section shall be applied to the fifteen miles of watershed draining into the said river or creek next above the intake of the water-works.—Rev., 3046.

3304. Penalty for failing to inspect.—For failure on the part of any water company to comply with the requirements in regard to inspections and analyses provided for in this chapter, shall be punished by a deduction from any charges for water against the city or town supplied of twenty-five dollars for each and every such failure: Provided, that in no one year shall the sum of such forfeitures exceed five hundred dollars.—Rev., 3047.

Note.—When waterworks owned by municipality, officers failing to make inspection indictable, see s. 3861 of Revisal.

3305. Cities and towns to make inspection.—Every city or town having a public water supply shall, at its own expense, have made at least once in every three months by one of its own officials a sanitary inspection of the entire watershed of its water supply, and it shall be

the duty of the official making such inspection to report to the mayor any violation of this chapter.—Rev., 3048.

3306. Residents on watersheds to obey instructions.—Every person residing or owning property on the watershed of a lake, pond or stream, from which a public drinking supply is obtained, shall carry out such reasonable instructions as may be furnished him in the manner hereinbefore set forth, or directly by the municipal health officer, or by the state board of health.—Rev., 3049.

Note.—Failure to comply with this section a misdemeanor, see Crimes.

3307. Inspectors may enter upon premises.—Each sanitary inspector herein provided for is authorized and empowered to enter upon any premises and into any building upon his respective watershed for the purpose of making the inspections required.—Rev., 3050.

3308. Sewage not discharged in.—No person or municipality shall flow or discharge sewage into any drain, brook, creek or river from which a public drinking water supply is taken, unless the same shall have been passed through some well known system of sewage purification approved by the state board of health; and the continual flow and discharge of such sewage may be enjoined upon application of any person.—Rev., 3051.

Note.—For violation of above section, see s. 3858 of Revisal.

Polluting watershed misdemeanor, see s. 3862 of Revisal.

Depositing human excreta misdemeanor, see s. 3857 of Revisal.

3309. Towns, etc., not having sewerage system.—All schools, hamlets, villages, towns or industrial settlements which are now located, or may hereafter be located on the shed of any public water supply, not provided with a sewerage system, shall provide and maintain a system for collecting and disposing of all accumulations of human excrement within their respective jurisdictions or control, at least once each week, by burning, by burial, or by some other method approved by the state board of health.—Rev., 3052; Laws 1907, c. 585.

Note.—Failure to comply with this section misdemeanor, see s. 3861 of Revisal.

3310. No cemetery on watershed.—No burying ground or cemetery shall be established on the watershed of any public water supply nearer than five hundred yards of the source of supply.—Rev., 3053.

2. Analyses.

3311. To be made.—Every water company, whether owned by private individuals or corporations, or by a municipality, shall have made, not less frequently than once in every three months, at its own expense, by the chemist of the state board of health, or such chemist as the said board may designate, a chemical analysis, and once every month a bacteriological examination at its own expense by the biologist of the state board of health, or such biologist as said board may designate, of a sample of its water drawn from a faucet used for drinking purposes, packed and shipped in accordance with the instructions to be furnished by the secretary of the state board of health.—Rev., 3054.

3312. State board of health may have examination made; fee.—For carrying out the provisions of this chapter the state board of health is authorized and empowered to have the bacteriological examination made as hereinbefore provided for, and to charge for the same the sum of five dollars for each examination.—Rev., 3055.

3313. State board of health to make examinations.—As a check and guarantee of the faithful performance of the requirements laid down in this chapter the state board of health shall make or have made by its authorized agents such inspections of the watersheds and such chemical and bacteriological examinations of the public water supplies

of the state as may be deemed necessary to insure their purity. Should such inspections or examinations show conditions dangerous to the public health the secretary of the state board of health shall notify the mayor, the municipal health officer and the superintendent or manager of the water-works at fault and demand the immediate removal of said dangerous conditions. If at the end of thirty days after the service of said notice and demand the said dangerous conditions have not been removed to the extent that due diligence could accomplish such removal, the said secretary shall have printed in one or more of the local newspapers a plain statement of the facts for the information and protection of the citizens using the water. [And if at the end of ninety days more, or four months from the time of the first service of said notice of dangerous conditions and demand for removal, the said removal has not been accomplished, the firm, individual or corporation selling water to the public shall be guilty of a misdemeanor, and shall upon conviction thereof be fined in the sum of five hundred dollars; and a continuance of the said conditions dangerous to the public health for thirty days thereafter shall constitute a new offense and be punishable by a fine of the same amount: Provided, that the time limit above set may be extended by a committee of three members of the state board of health, of which committee the secretary and the engineer shall be two, to such extent as the facts and conditions in the case may in their judgment warrant.]—Rev., 3056; Laws 1907, c. 963.

Note.—Chapter 963, Laws 1907, being the portion enclosed in brackets in the next section above, does not apply to Mecklenburg and Wake counties.

3314. State laboratory of hygiene; analyses of water, sputum, blood, etc.; appropriation for; tax against water companies.—For the better protection of the public health and to prevent the spread of communicable diseases there shall be established a state laboratory of hygiene, the same to be under the control and management of the state board of health; and it shall be the duty of the state board of health to have made in such laboratory monthly examinations of samples from all the public water supplies of the state, except the old Fountain Head water-works of Fayetteville, and it shall be required to pay for such analysis as the county board of health of Cumberland may provide or require. The board shall also cause to be made examinations of well and spring waters when in the opinion of any county superintendent of health or any registered physician there is reason to suspect such waters of being contaminated and dangerous to health. The board shall likewise have made in this laboratory examinations of sputum in cases of suspected tuberculosis, of throat exudates in cases of suspected diphtheria, of blood in cases of suspected typhoid and malarial fever, of faeces in cases of suspected hook-worm diseases, and such other examinations as the public health may require. For the support of the said laboratory the sum of two thousand dollars is hereby appropriated and an annual tax of sixty-four dollars, payable quarterly, by each and every water company, municipal, corporate and private, selling water to the people; said tax to be collected by the sheriff as other taxes and paid by said sheriff directly to the treasurer of the state board of health; and the printing and stationery necessary for the laboratory, to be furnished upon requisition upon the state printer. —Rev., 3057; Laws 1907, cc. 721, 884.

3. Miscellaneous Provisions.

3315. Precaution against contamination.—In the interest of the public health every person, company, municipal corporation or agency thereof, selling water to the public for drinking and household purposes, shall take every reasonable precaution to protect from contamination and assure the healthfulness of such water; and any provisions

in any charters heretofore granted to such persons, companies or municipal corporations in conflict with the provisions of this chapter are hereby repealed.—Rev., 3058.

3316. Mayors to have concurrent jurisdiction.—The mayor of each city or town having a public water supply shall have concurrent jurisdiction with any justice of the peace to hear and determine all violations of this chapter, provided such violation is within the jurisdiction of the justice of the peace.—Rev., 3059.

3317. Condemnation of lands.—All water companies operating under charters from the state or license from the municipalities, which may maintain public water supplies may acquire by condemnation such lands and rights in land and water as are necessary for the successful operation and protection of their plants, said proceedings to be the same as prescribed by law for acquiring right of way by railroad companies.—Rev., 3060.

4. For Public Institutions.

3318. May enter upon lands to lay pipes, etc.—For the purpose of providing water supplies, the directors or other lawful managers of any public institution of the state may enter upon the lands through which they may desire to conduct their pipes for the said purpose, and lay them under ground, and they, at all times, shall have the right to enter upon the said lands for the purpose of keeping the water line in repair and do all things necessary to that end.—Rev., 3061.

3319. Compensation for land.—If damages shall be claimed for the use of such lands and the parties can not agree as to the amount of compensation to be paid, they may proceed in the manner now provided by law for railroad companies to procure right of way.—Rev., 3062.

CHAPTER LXXI.

WEIGHTS AND MEASURES.

1. Standards of.

3320. To be used by traders; exception.—No trader or other person shall buy or sell, or otherwise use in trading, any other weights and measures than are made and used according to the standard prescribed by the congress of the United States: Provided, that this chapter shall not prevent the citizens of the state from buying and selling grain by measure as may be agreed upon between the parties.—Rev., 3063.

3321. Provided by commissioners; branded.—The board of commissioners of each county shall, at the charge of their county, procure standard sealed weights of half hundred, quarter hundred, ten pounds, five pounds, two pounds and one pound, one-half pound, one-quarter pound, two ounces, one ounce, one-half ounce, gauging rod and waist sticks, yard sticks, half bushel, peck, half peck, quarter peck, and one-eighth peck; gallon, half gallon, quart, pint, half pint, and gill measure, of the United States standard, sealed and branded "N. C."—Rev., 3064.

3322. What is an acre of land.—The measure of an acre of land shall be equal to a rectangle of sixteen poles or perches in length and ten in breadth, and shall contain one hundred and sixty square perches or poles, or four thousand eight hundred and forty square rods, six hundred and forty such acres being contained in a square mile.—Rev., 3065.

3323. How many pounds to a bushel; penalty.—A bushel of wheat shall be sixty pounds; of indian corn, fifty-six pounds; of corn meal, forty-eight pounds; of rye, fifty-six pounds; of barley, forty-eight pounds; of oats, thirty-two pounds; of flax seed, fifty-five pounds; of clover seed, sixty pounds; of peas, sixty pounds; of rough rice, forty-four pounds; of buckwheat, fifty pounds; of corn in ear, seventy pounds; of cotton, sea island, forty-four pounds; of soy beans, peas, lupines, lentils, vetches, lucerne, sixty pounds; of japan clover in hulls, twenty-five pounds; of burr clover, in hulls, eight pounds; of castor beans, forty-six pounds; of sunflower seed, twenty-four pounds; of broom corn, forty-six pounds; of hemp seed, forty-four pounds; of rape seed, fifty pounds; of mustard seed, fifty-eight pounds; of teosinte, fifty-nine pounds; of sorghum, kaffir corn and millets, fifty pounds; of Johnson grass seed, twenty-five pounds; of orchard grass seed, red top grass seed, bluegrass seed, seed of the brome grasses, tall meadow seed, oatgrass seed, seed of all the fescue grasses except the tall and meadow fescue, fourteen pounds; of tall fescue and meadow fescue grass seed, twenty-four pounds; timothy grass, forty-five pounds; chestnuts, walnuts and hickory nuts free from hull, fifty pounds; apple seed, forty pounds; of peanuts, twenty-two pounds; of cotton seed, thirty pounds; but this section shall not be construed to prevent the purchase and sale by measure. If any person shall take any greater weight for one bushel of the several articles than is herein mentioned, he shall forfeit and pay the sum of twenty dollars for each separate case to any person who may sue for the same.—Rev., 3066.

3324. Penalty for using, untested.—If any person, after demand by the standard-keeper for permission to examine and adjust the same, shall buy, sell, or barter by any weight or measure which shall not be tried by the standard, and sealed or stamped as aforesaid, he shall, for every such offense, forfeit and pay forty dollars; and if any person shall sell and deliver by less measure than the standard, he shall forfeit and pay for each offense forty dollars to the person suing therefor.—Rev., 3067.

2. State Keeper.

3325. Appointed by governor; keeper of capitol, when.—The governor is authorized to appoint a suitable person to take care of the balances, weights and measures, and perform the duties relating to weights and measures heretofore imposed on the governor, and such other duties as the governor may prescribe, touching said balances and weights and measures; and he shall take from such person a bond with surety, to be approved by the governor, in the penal sum of five hundred dollars for the safe-keeping of said weights and measures, and for the performance of all his duties. And in case the governor fails to appoint, or the person appointed fails to qualify or discharge said duties, the keeper of the capitol shall be ex officio the keeper of weights and measures, and discharge the duties and receive the compensation provided.—Rev., 3068.

3326. Duties of.—It shall be the duty of the keeper of weights and measures, under the direction of the governor, to procure and furnish, at prime cost, to any of the counties, upon an order of the board of county commissioners, any of the standard sealed weights and measures required by law to be kept, and he is hereby authorized, by and with the approval of the governor, to contract for the manufacture of plain sealed weights substantially made of iron, steel or brass, as the county ordering may direct; yardstick made of substantial wood, each end neatly covered with metal, sealed, marked and stamped "N. C."; half bushel, peck, half peck, quarter peck, and one-eighth peck, made of substantial, well-seasoned wood, with secure metallic binding and casing; gallon, half gallon, quart, pint, half pint, and gill meas-

ure, made of light sheet copper with iron handles. He shall procure and furnish as herein provided to the board of commissioners of any county ordering the same, dry and liquid sealed measures and yardstick made of brass or copper.—Rev., 3069.

3327. Must supply counties at their cost.—It shall be the duty of the state standard-keeper to supply to each county, which shall call for the same, such standard weights as the standard-keeper of such county shall demand, duly sealed, such county paying to the state treasurer the actual cost of such weights, upon the certificate of the state standard-keeper.—Rev., 3070.

3328. Record kept by.—It shall be the duty of the state standard-keeper to keep a book, in which he shall keep an accurate account of all the weights and measures by him delivered, and the expenses incurred by him in the purchase of such weights and measures, subject to the inspection of the state treasurer and the general assembly.—Rev., 3071.

3. County Keeper.

3329. Appointed by commissioners; tenure; oaths.—The weights and measures, stamps and brands thus provided, shall be kept at the courthouse of the respective counties by a standard-keeper, to be elected by the board of commissioners for the term of two years; and the person thus elected shall, before the board of county commissioners, take the oaths required for public officers and also an oath of office. But the standard keeper may remove the weights and measures, stamps and brands from the courthouse, not to exceed sixty days in any one year, for the purpose of testing weights and measures throughout the county. This section shall not apply to the counties of Beaufort, Bertie, Bladen, Currituck, Gaston, Halifax, Lincoln, Montgomery, Moore, Northampton, Rutherford, Warren and Yancey, and in these counties the office of standard-keeper is abolished.—Rev., 3072.

3330. May test every two years; penalty; exception.—Every person using weights and measures and steelyards, embracing balances and other instruments used in weighing, shall allow and permit the standard-keeper of the county to try, examine and adjust by the standard at least once every two years all the said weights, measures, steelyards, embracing balances and other instruments used in weighing; and every trader or dealer by profession, and every miller, at least once in every two years thereafter, shall permit their weights, measures, steelyards, balances and other instruments used in weighing, to be examined and adjusted by the standard-keeper of the county in which such weights and measures are used, and the standard-keeper, when practicable, shall mark, by stamp or brand, the weights, measures, steelyards, balances and other instruments used in weighing found or made to agree with the standard, and shall give a certificate of such examination and adjustment, stating the weights, measures, steelyards, balances and other instruments used in weighing by him examined and adjusted; and every person using, buying or selling by weights and measures, who shall neglect to comply with the requisites of this section, shall forfeit fifty dollars, to be recovered at the instance of the standard-keeper, one-half to his use and the other half to the use of the county wherein the offense is committed. But in the counties of Camden and Currituck no such person shall be required to permit such examination and adjustment oftener than once in four years. This section shall not apply to the counties of Beaufort, Bertie, Bladen, Currituck, Gaston, Halifax, Lincoln, Montgomery, Moore, Northampton, Rutherford, Warren and Yancey, and in these counties the office of standard-keeper is abolished. In Wilson county whenever any person has had his weights and measures tried by the standard and sealed or stamped as aforesaid, he shall not be required to have them

tried by the standard again unless some responsible person in the county of Wilson shall make oath, and file the same with the standard-keeper of said county, that he has reason to believe that said weights or measures are not properly adjusted. That notice shall be given the owner of said weights or measures that complaint has been made under oath as aforesaid, and then the owner of said weights and measures shall have his weights and measures tried, as herein provided, and for failure shall then be subject to the penalties mentioned in section three thousand and sixty-seven.—Rev., 3073.

3331. Destroys weights and measures, when.—In every instance where the standard-keeper shall have before him for adjustment, or shall find in the possession of any person, intending to use the same, any weight or measure that can not be adjusted so as to meet the requirements of the law, it shall be the duty of the standard-keeper to destroy the same.—Rev., 3074.

4. Surveyors.

3332. What is a surveyor's chain; tested.—The standard measure for a surveyor's chain shall be twenty-two standard yards, a standard half or two-pole chain shall be eleven standard yards, a standard quarter or one-pole chain shall be five and one-half standard yards; but every person using a surveyor's chain, half chain or quarter chain for measuring land shall every two years test the same in the manner hereinafter provided.—Rev., 3075.

3333. Magnetic instruments and chains tested.—Every surveyor operating in any of the counties of this state with magnetic instruments, whether in a public or private capacity, shall, between the first day of January and thirty-first day of December in each and every year, carefully test his needle upon the official meridian monuments in the county in which he resides or the nearest county in which such monuments have been erected, by adjusting his instrument over the intersection of the lines cut into the top of one of the meridian monuments so established and sighting to the intersection of the lines cut into the top of the other meridian monument, noting the variation of the magnetic from the true meridian and the direction thereof, and shall test the chain or other instrument of linear measure upon the distance from centre to centre as indicated by intersecting lines of the two beams, tablets or other official monuments set at or near the county court-house for this purpose, noting the error of such instrument as compared with the standard of the monuments. On every official record of a survey of lands made after the first day of July, nineteen hundred and one, in any county in which meridian monuments have been erected, there shall be entered by the surveyor making such survey a record as to the date of testing the magnetic instrument used, and the amount of the declination or variation of the magnetic needle indicated at such test.—Rev., 3076.

3334. Instruments tested in another county.—Before making surveys in any county other than the one in which the magnetic instruments and instruments for linear measure to be used have already been tested, said surveyor shall procure in writing from the register of deeds of the county in which said monuments have been established, nearest to the point where the survey is to be made, a statement giving the declination of the magnetic needle for the year in which it was last determined, and the rate and direction of the variation of said magnetic needle since that time, and this data shall be recorded as a part of the record of his survey. But no surveyor shall be required to go outside of the county in which he resides for the purpose of testing the instruments herein named.—Rev., 3077.

3335. Tests returned to register of deeds; registered.—Such tests and the correction, if any, resulting therefrom shall be returned by the surveyor in writing and under oath to the register of deeds for the county in which such meridian is situate within ten days from the taking of the observations, setting forth the name of the surveyor, his residence, the character of the instrument tested, the date of the observations, the declination east and west of the magnetic needle from the true meridian, together with a fee of ten cents for filing and registering the same; and such return shall be filed and registered by the register of deeds in a book properly ruled and lettered, to be furnished by the board of commissioners of the county, to be used for such purpose exclusively and entitled "The Meridian Record."—Rev., 3078.

3336. Meridian monuments protected by county commissioners.—It shall be the duty of the board of county commissioners to maintain and protect the meridian monuments and tablets or monuments for the testing of chains or other instruments of linear measure established by the state, or national surveys co-operating with the county authorities, in good order and condition as the official standards of the county.—Rev., 3079.

CHAPTER LXXII.

WIDOWS.

1. Dissent from Will.

3337. How; when.—Every widow may dissent from her husband's will before the clerk of the superior court of the county in which such will is proved, at any time within six months after the probate. The dissent may be in person, or by attorney authorized in writing, executed by the widow and attested by at least one witness and duly proved. The dissent, whether in person or by attorney, shall be filed as a record of court. If the widow be an infant or insane, she may dissent by her guardian.—Rev., 3080.

3338. Effect of dissent.—Upon such dissent, the widow shall have the same rights and estates in the real and personal property of her husband as if he had died intestate.—Rev., 3081.

3339. Not liable for husband's debts.—The dower or right of dower of a widow, and such lands as may be devised to her by his will, if such lands do not exceed the quantity she would be entitled to by right of dower, although she has not dissented from such will, shall not be subject to the payment of debts due from the estate of her husband, during the term of her life.—Rev., 3082.

2. Dower.

3340. Who entitled to.—Widows shall be endowed as at common law as in this chapter defined: Provided, if any married woman shall commit adultery, and shall not be living with her husband at his death, or shall be convicted of the felonious slaying of her husband, or being accessory before the fact to the felonious slaying of her husband, she shall thereby lose all right to dower in the lands and tenements of her husband; and any such adultery or conviction may be pleaded in bar of any action or proceeding for the recovery of dower.—Rev., 3083.

3341. Consists of what.—Subject to the provision in the preceding section every married woman, upon the death of her husband intestate, or in case she shall dissent from his will, shall be entitled to an estate for her life in one-third in value of all the lands, tenements and hereditaments whereof her husband was seized and possessed at any time

during the coverture, in which third part shall be included the dwelling-house in which her husband usually resided, together with offices, outhouses, buildings and improvements thereunto belonging or appertaining; she shall in like manner be entitled to such an estate in all legal rights of redemption and equities of redemption or other equitable estates in lands, tenements and hereditaments whereof her husband was seized in fee at any time during the coverture, subject to all valid incumbrances existing before the coverture or made during it with her free consent lawfully appearing thereto. The jury summoned for the purpose of assigning dower to a widow shall not be restricted to assign the same in every separate and distinct tract of land, but may allot her dower in one or more tracts, having a due regard to the interest of the heirs as well as to the right of the widow.—Rev., 3084.

When a widow qualified as executrix under the will of her husband, and exercised the duties of the office sixteen months, when, ascertaining that the estate was insolvent, she claimed the right of dower in the lands of her husband, the same was granted.—Simonton v. Houston, 78—408.

A husband who acquired land before the dower act of 1867 has a right to sell the same and to pass title, free from the claim of dower, by his single deed, unless he has dedicated the land for a homestead by allotment.—Jenkins v. Jenkins, 82—208; Bruce v. Strickland, 81—267.

Petitions for dower should be filed in the county of the husband's last usual residence, but the jury of allotment may assign the same in one or more tracts situate in one or more counties.—Askew v. Bynum, 81—350.

Personal property acquired by the wife since the adoption of the constitution of 1868 is her separate property, free from "the debts, obligations and engagements of the husband."—Holliday v. McMillan, 79—315.

Real estate belonging to a partnership is subject to dower in favor of a widow of one of the partners, only so far as a surplus may be left after paying the partnership debts.—Stroud v. Stroud, 62—525.

A widow who is entitled to dower can ordinarily exercise no right over the land until her dower has been assigned.—Webb v. Boyle, 63—271.

A petition for dower may be ex parte by the widow and the heirs, but if the widow be guardian of the heirs, and the estate be insolvent, the heirs should be made parties defendant, with a guardian ad litem. Creditors may also come in and be made defendants.—Avery ex parte, 64—110.

In ascertaining the distributive share of a widow who dissents from her husband's will, all his personal estate, whether consisting of advancements theretofore made to children, or legacies to grandchildren or strangers, is to be brought together, and her share is to be taken out pursuant to the statute of distribution.—Arrington v. Dortch, 77—367.

3342. Husband's alienation does not bar, except to secure purchase-money.—No alienation of the husband alone, with or without covenant of warranty, shall have any other or further effect than to pass his interest in such estate, subject to the dower right of his wife: Provided, that a mortgage or trust deed by the husband to secure the purchase-money, or any part thereof, of land bought by him, shall, without the wife executing the deed, be effectual to pass the whole interest according to the provisions of the said deed.—Rev., 3085.

3343. Conveyed by joining in deed.—The right to dower under this chapter shall pass and be effectual against any widow or person claiming under her upon the wife joining with her husband in the deed of conveyance and being privately examined as to her consent thereto in the manner prescribed by law.—Rev., 3086.

A widow who joined her husband before his death in executing a deed of trust to secure a certain debt of his, and conveying her right of dower in the only land held by them at the husband's death, becomes a creditor of the husband's estate to the amount of the value of her dower in the land.—Gwathmey v. Pearce, 74—398.

III. Dower Allotted.

3344. Assigned by agreement, when.—If the personal property of a decedent be sufficient to pay his debts and charges of administration, the heir or devisee with the widow may, by deed, agree to an assignment of her dower.—Rev., 3087.

3345. Application for.—If no such agreement be made, the widow may apply for assignment of dower by petition in the superior court, and, if she fail to make such application within three months after the

death of her husband, any heir or devisee may file a petition reciting the facts that the said widow is entitled to dower on certain lands and has not applied for it, and demand that her said dower be assigned to her. In all cases the widow and all heirs and devisees and persons in possession of, or claiming estates in, the lands shall be made parties, and the court shall hear and pass upon the petition in like manner as in other cases of special proceedings.—Rev., 3088.

3346. How assigned.—If dower be adjudged, it shall be assigned by a jury of three persons qualified to act as jurors, unless one of the parties demand a greater number, not exceeding twelve, who shall be summoned by the sheriff to meet on the premises or some part thereof, and being duly sworn by the sheriff or other person authorized to administer oaths, shall proceed to allot and set apart to the widow her dower in said premises according to law and make report of their proceedings under their hands within five days to the clerk of the superior court. When the husband dies seized and possessed of lands in any other county than that in which dower is to be assigned, the clerk of the superior court of the county in which dower is to be assigned shall, upon application of the widow entitled to dower issue a commission to the sheriff of such other county requiring him to summons three or more persons, as may be asked in said application, qualified to act as jurors, to go upon the lands of said husband in the county of said sheriff and assess the value of the same after being duly sworn by the sheriff for that purpose, and report their assessment under their hands and seals through the sheriff, who shall countersign the same as their report to the clerk issuing said commission; and said report in the hands of the jury summoned to assign the dower shall be considered by them a true valuation of the lands mentioned in the report, and said last-mentioned jury shall be deemed to have met on the lands thus assessed and shall assign the dower accordingly.—Rev., 3089.

3347. Notice to parties of meeting of jury.—The parties to such proceeding, or their attorneys, if within the county, shall be notified of the time and place of meeting of the jury appointed to assign dower, at least five days before the meeting.—Rev., 3090.

3348. Pay of minors allotting dower.—Any person appointed by any court or justice of the peace, or summoned by any sheriff to allot or set apart to any widow a year's allowance under the statute, or to allot or assign to any widow dower in her husband's land, and who shall serve, shall be paid the sum of one dollar per day or fraction of the day engaged, and the same shall be taxed as a part of the bill of costs of the proceeding.—Laws 1907, c. 223.

Note.—For allotment in proceeds of sale for partition, see ss. 2965, 2974 *infra*.

IV. Year's Support.

3349. Who entitled.—Every widow of an intestate, or of a testator from whose will she has dissented, shall be entitled, besides her distributive share in her husband's personal estate, to an allowance therefrom, for the support of herself and her family for one year after his decease, and said allowance shall be exempt from any lien, by judgment or execution, acquired against the property of her said husband: Provided, if any married woman shall commit adultery, and shall not be living with her husband at his death, or shall be convicted of the murder of her husband, or of being accessory before the fact to the murder of her husband, she shall thereby lose all right to a year's provision, and to a distributive share from the personal property of her husband, and such adultery or conviction may be pleaded in bar of any action or proceeding for the recovery of such rights and estates.—Rev., 3091.

3350. Value.—Except in cases in which a larger allowance is hereinafter provided for, the value of a year's allowance shall be three hundred dollars, and one hundred dollars in addition thereto for every member of the family besides the widow.—Rev., 3092.

3351. Family defined.—The family of the deceased, for the purposes of this chapter, shall be deemed to be, besides the widow, every child, either of the deceased or of the widow, and every other person to whom the deceased or widow stood in place of a parent, who was residing with the deceased at his death, and whose age did not then exceed fifteen years.—Rev., 3093.

3352. If no widow, children entitled.—If a man die intestate leaving no widow surviving him, or if his widow die before her year's allowance is assigned her, then there shall be assigned to every other member of the family, as in this chapter defined, the sum of one hundred dollars each, which shall be turned over immediately to the guardian and used by him in the care and education of the members of the family, respectively; and if there be no guardian, it shall be received and disbursed by the clerk of the superior court for their benefit.—Rev., 3094.

3353. From what assigned.—Such allowance shall be assigned from the crop, stock and provisions of the deceased in his possession, at the time of his death, if there be a sufficiency thereof in value; and if there be a deficiency, it shall be made up by the personal representative from the personal estate of the deceased.—Rev., 3095.

V. Year's Support Assigned.

3354. Personal representative shall assign.—It shall be the duty of every administrator, collector, or executor of a will, from which the widow of a testator has dissented, on application in writing, signed by the widow of such intestate or testator, at any time within one year after the decease of the husband, to assign to her a year's allowance in the manner prescribed in this chapter, to the value herein prescribed, deducting therefrom the value of any articles consumed by the widow and her family since the death of her husband to the time of the assignment. If there be no widow, or if she should die before the year's provision is assigned, the personal representative shall assign one hundred dollars to every other member of the family as defined in this chapter; but if there be no personal representative it shall be assigned by a justice of the peace, upon the application of the guardian or next friend of the children entitled.—Rev., 3096.

3355. Value ascertained.—The value of stock, crop and provisions assigned to the widow, as well as that of the articles consumed, shall be ascertained by a justice of the peace and two persons qualified to act as jurors of the county in which administration was granted or the will proved.—Rev., 3097.

An application for year's support, made after the expiration of twelve months from the death of the husband, is barred by the statute of limitations.—Cook v. Sexton, 79—305.

3356. Procedure to assign.—Upon the application of the widow, the personal representative of the deceased shall apply to a justice of the peace of the township in which the deceased resided, or some adjoining township, to summon two persons qualified to act as jurors, who, having been sworn by the justice to act impartially, shall, with him, ascertain the number of the family of the deceased according to the definition given in this chapter, and examine his stock, crop and provisions on hand, and assign to the widow so much thereof as will not exceed the value limited in this chapter, subject to the deduction prescribed in this chapter: Provided, that in case there shall be no administration upon said estate, or in the event that the personal representative shall fail or refuse to apply to a justice of the peace as aforesaid for the space of ten days after the widow shall have filed with him

the application as aforesaid, or if the widow shall be the personal representative, she may make the application, and it shall be the duty of the justice to proceed in the same manner as though the application had been made by the personal representative: Provided further, that in all cases, if there be no crop, stock or provisions on hand, or not a sufficient amount, the commissioners may allot to the widow any articles of personal property of the deceased, and also any debt or debts known to be due him, and such allotments shall vest in the widow said property, and the right to collect the debts thus allotted: Provided further, that where the widow and personal effects of the deceased husband shall have been removed from the township or county where deceased husband resided before his death, the said widow may apply to any justice of the peace of any township or county where such personal property is located, and it shall be the duty of such justice to allot and assign the year's allowance as if the husband had resided and died in that township.—Rev., 3098.

3357. Duty of commissioners.—The commissioners shall make and sign three lists of the articles assigned to the widow, stating the quantity and value of each, the number in the family, and the deficiency to be paid by the personal representative. One of these lists shall be delivered to the widow, one to the personal representative and one returned by the justice, within twenty days after the assignment, to the superior court of the county, and the clerk shall file and record the same and enter judgment against the personal representative, to be paid when assets shall come into his hands, for any residue found in favor of the widow.—Rev., 3099.

3358. Appeal.—The personal representative, or the widow, or infant by his guardian or next friend, or any creditor, legatee or distributee of the deceased, may appeal from the finding of the commissioners to the superior court of the county, and, within ten days after the assignment, cite the adverse party to appear before such court on a certain day, not less than five nor exceeding ten days after the service of the citation.—Rev., 3100.

3359. Duty of appellant.—At or before the day named, the appellant shall file with the clerk a copy of the assignment and a statement of his exceptions thereto, and the issues thereby raised shall be decided as other issues are directed to be. When the issues shall have been decided, judgment shall be entered accordingly, if it may be without injustice, without remitting the proceedings to the commissioners.—Rev., 3101.

3360. Allowance to widow a credit to personal representative.—Upon the settlement of the accounts of the personal representative, he shall be credited with the articles assigned, and the value of the deficiency assessed as aforesaid, if the same shall have been paid, unless the allowance be impeached for fraud or gross negligence in him.—Rev., 3102.

VI. Increased Allowance.

3361. When allowance in full.—If the estate of a deceased be insolvent, or if his personal estate does not exceed two thousand dollars, the allowance for the year's support of his widow and her family shall not, in any case, exceed the value prescribed above; and the allowance made to her as above prescribed shall preclude her from any further allowance.—Rev., 3103.

3362. Assigned on application to superior court.—It shall not, however be obligatory on a widow to have her support assigned as above prescribed. Without applying to the personal representative of her deceased husband, she may, at any time within one year after the death of her husband, apply to the superior court of the county in which the will was proved, or administration granted, to have a year's support for herself and her family assigned to her.—Rev., 3104.

3363. Proceeding; parties.—The application shall be by summons, as is prescribed for special proceedings, in which the personal representative of the deceased, if there be one other than the plaintiff, the largest known creditor, or legatee, or some distributee of the deceased, living in the county, shall be made defendant, and the proceedings shall be as prescribed for special proceedings between parties.—Rev., 3105.

3364. Complaint.—In her complaint the widow shall set forth, besides the facts entitling her to a year's support and the value thereof, as claimed by her, the further facts that the estate of the deceased is not insolvent, and that the personal estate of which he died possessed exceeded two thousand dollars, and also whether or not she had an allowance made her, and the nature and value thereof; and if no allowance has been made, the quantities and values of the articles consumed by her and her family since the death of her husband.—Rev., 3106.

3365. Judgment.—If the material allegations of the complaint be found true, the judgment shall be that she is entitled to the relief sought; and the court shall thereupon issue an order to the sheriff or other proper officer of the county, commanding him to summon a justice of the peace and two indifferent persons qualified to act as jurors of the county, to assign to the plaintiff from the crop, stock and provisions of the deceased, a sufficiency for the support of herself and her family, for one year from the death of her husband; and if there be a deficiency thereof, to assess such deficiency, to be paid by the personal representative from the personal assets of the deceased, deducting, nevertheless, in all cases from such allowance the articles, or the value thereof, consumed by the widow and her family before such assignment, and also any sum previously assigned her.—Rev., 3107.

3366. Duty of commissioners; report.—The said commissioners shall be sworn by the justice and shall proceed as prescribed in this chapter, except that they may assign to the widow a value sufficient for the support of herself and her family according to the estate and condition of her husband and without regard to the limitation aforesaid in this chapter; but the value allowed shall not in any case exceed the one-half of the annual net income of the deceased for three years next preceding his death. Their report shall be returned by the justice to the court.—Rev., 3108.

3367. Exceptions by interested persons.—The personal representative, or any creditor, distributee or legatee of the deceased, within twenty days after the return of the report, may file exceptions thereto. The plaintiff shall be notified thereof and cited to appear before the court on a certain day, within twenty, and not less than ten days after service of the notice, and answer the same, the case shall thereafter be proceeded in, heard and decided as provided in special proceedings between parties.—Rev., 3109.

3368. Confirmation; execution; costs.—If the report shall be confirmed, the court shall so declare, and execution shall issue to enforce the judgment as in like cases.—Rev., 3110.

CHAPTER LXXIII.

WILLS.

I. Execution.

3369. Age of testators.—No person shall be capable of disposing of real or personal estate by will, until he shall have attained the age of twenty-one years.—Rev., 3111.

3370. Married woman.—A married woman owning real or personal property may dispose of the same by will.—Rev., 3112.

Where a married woman dies intestate her husband is entitled to his common law right of curtesy; where she devises her land, under section 6, article 19, of the constitution, the estate of curtesy is destroyed.—*Tiddy v. Graves*, 126—620.

3371. How executed.—No last will or testament shall be good or sufficient, in law, to convey or give any estate, real or personal, unless such last will shall have been written in the testator's lifetime, and signed by him, or by some other person in his presence and by his direction, and subscribed in his presence by two witnesses at least, no one of whom shall be interested in the devise or bequest of the said estate, except as hereinafter provided; or, unless such last will and testament be found among the valuable papers and effects of any deceased person, or shall have been lodged in the hands of any person for safe-keeping, and the same shall be in the handwriting of such deceased person, with his name subscribed thereto, or inserted in some part of such will; and if such handwriting shall be proved, by three credible witnesses, who verily believe such will and every part thereof is in the handwriting of the person whose will it appears to be, then such will shall be sufficient to give and convey real and personal estate.—*Rev.*, 3113.

If the language used by the writer of a letter shows an evident intent to make a disposition of his property to the person addressed, after the writer's death, it is a reasonable inference that the letter, transmitted by mail to one so deeply interested in preserving it, was sent to the writer for safe-keeping as his will, although the addressee was not specially requested to preserve it as such.—*Alston v. Davis*, 118—202.

3372. Execution of appointments by.—No appointment, made by will in exercise of any power, shall be valid, unless the same be executed in the manner by law required for the execution of wills; and every will, executed in such manner, shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity.—*Rev.*, 3114.

II. Revocation.

3373. How written will revoked.—No will or testament in writing, or any clause thereof, shall be revocable, otherwise than by some other will or codicil in writing, or other writing declaring the same, or by burning, canceling, tearing, or obliterating the same, by the testator himself, or in his presence and by his direction and consent; but all wills or testaments shall remain and continue in force, until the same be burnt, canceled, torn, or obliterated by the testator, or in his presence and by his consent and direction; or unless the same be altered or revoked by some other will or codicil in writing, or other writing of the testator, signed by him, or some other person in his presence and by his direction, and subscribed in his presence by two witnesses at least; or unless the same be altered or revoked by some other will or codicil in writing, or other writing of the testator, all of which shall be in the handwriting of the testator, and his name subscribed thereto or inserted therein, and lodged by him with some person for safe-keeping, or left by him in some secure place, or among his valuable papers and effects, every part of which will or codicil or other writing shall be proved to be in the handwriting of the testator, by three witnesses at least.—*Rev.*, 3115.

3374. Revoked by marriage; exception.—All wills shall be revoked by subsequent marriage of the maker except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not, in default of such appointment, pass to his heirs, executor or administrator, or the person entitled as his next of kin, under the statute of distributions.—*Rev.*, 3116.

3375. Not revoked by altered circumstances.—No will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances.—*Rev.*, 3117.

3376. Conveyance after execution does not.—No conveyance or other act made or done subsequently to the execution of a will of, or relating to any real or personal estate therein comprised, except an act by which such will shall be duly revoked, shall prevent the operation of the will with respect to any estate or interest in such real or personal estate as the testator shall have power to dispose of, by will at the time of his death.—Rev., 3118.

III. Witnesses.

3377. Executors competent.—No person, on account of being an executor of a will, shall be incompetent to be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof.—Rev., 3119.

3378. Devise.—If any person shall attest the execution of any will, to whom or to whose wife or husband any beneficial devise, estate, interest, legacy, or appointment of or affecting any real or personal estate shall be thereby given or made, such devise, estate, interest, legacy, or appointment shall, so far only as concerns such person attesting the execution of such will or the wife or husband of such person, or any person claiming under such person, or wife or husband, be void; and such person so attesting shall be admitted as a witness to prove the execution of such will, or the validity or invalidity thereof.—Rev., 3120.

3379. Witness dead, affidavits evidence, when.—Whenever the subscribing witness to any will shall die, or be absent beyond the state, it shall be competent upon any issue of *devisavit vel non*, to give in evidence the affidavits and proofs taken by the clerk upon admitting the will to probate in common form, and such affidavit and proceedings before the clerk shall be *prima facie* evidence of the due and legal execution of said will.—Rev., 3121.

4. Probate.

3380. Executor may apply for.—Any executor named in a will may, at any time after the death of the testator, apply to the clerk of the superior court, having jurisdiction, to have the same admitted to probate.—Rev., 3122.

3381. Executor failing, who may apply.—If no executor apply to have the will proved within sixty days after the death of the testator, any devisee or legatee named in the will, or any other person interested in the estate, may make such application, upon ten days' notice thereof to the executor.—Rev., 3123.

3382. Production of will for, compelled.—Every clerk of the superior court having jurisdiction, on application by affidavit setting forth the facts, shall, by summons, compel any person in the state, having in possession the last will of any decedent, to exhibit the same in his court for probate; and whoever being duly summoned refuses, in contempt of the court, to produce such will, or (the same having been parted with by him) refuses to inform the court on oath where such will is, or in what manner he has disposed of it, shall, by order of the clerk of the superior court, be committed to the jail of the county, there to remain without bail till such will be produced or accounted for, and due submission made for the contempt.—Rev., 3124.

3383. What shown on application.—On application to the clerk of the superior court, he must ascertain by affidavit of the applicant:

1. That such applicant is the executor, devisee or legatee named in the will, or is some other person interested in the estate, and how so interested.

2. The value and nature of the testator's property, as near as can be ascertained.

3. The names and residences of all parties entitled to the testator's property, if known, or that the same on diligent inquiry can not be discovered; which of said parties in interest are minors, and whether with or without guardians, and the names and residences of such guardians, if known. Such affidavit shall be recorded with the will and the certificate of probate thereof, if the same is admitted to probate.—Rev., 3125.

3384. Proof and examination in writing.—Every clerk of the superior court shall take in writing the proofs and examinations of the witnesses touching the execution of a will, and he shall embody the substance of such proofs and examinations, in case the will is admitted to probate, in his certificate of the probate thereof, which certificate must be recorded with the will. The proofs and examinations as taken must be filed in the office.—Rev., 3126.

3385. How admitted to probate.—Wills and testaments must be admitted to probate only in the following manner:

1. In case of a written will, with witnesses, on the oath of at least two of the subscribing witnesses, if living; but when any one or more of the subscribing witnesses to such will are dead, or reside out of the state, or can not after due diligence be found within the state, or are insane or otherwise incompetent to testify, then such proof may be taken of the handwriting, both of the testator and of the witness or witnesses so dead, absent, insane or incompetent, and also of such other circumstances as will satisfy the clerk of the superior court of the genuineness and the due execution of such will. In all cases where the testator executed the will by making his mark, and where any one or more of the subscribing witnesses are dead or reside out of the state, or are insane or otherwise incompetent to testify, it shall not be necessary to prove the handwriting of the testator, but proof of the handwriting of the subscribing witness or witnesses so dead, absent, insane or incompetent shall be sufficient. The probate of all wills heretofore taken in compliance with the requirements of this section are hereby declared to be valid.

2. In case of a holograph will, on the oath of at least three credible witnesses, who state that they verily believe such will and every part thereof is in the handwriting of the person whose will it purports to be, and whose name must be subscribed thereto, or inserted in some part thereof. It must further appear on the oath of some one of said witnesses, or of some other credible person, that such will was found among the valuable papers and effects of the decedent or was lodged in the hands of some person for safe-keeping.

3. In case of a nuncupative will, on the oath of at least two credible witnesses present at the making thereof, who state that they were specially required to bear witness thereto by the testator himself. It must also be proved that such nuncupative will was made in the testator's last sickness, in his own habitation, or where he had been previously resident for at least ten days, unless he died on a journey or from home. No nuncupative will shall be proved by the witnesses after six months from the making thereof, unless it was put in writing within ten days from such making; nor shall it be proved till a citation has been first issued or publication been made for six weeks in some newspaper published in the state, to call in the widow and next of kin to contest such will if they think proper.—Rev., 3127.

3386. How far probate conclusive.—Such record and probate is conclusive in evidence of the validity of the will, until it is vacated on appeal or declared void by a competent tribunal.—Rev., 3128.

3387. Wills filed in clerk's office.—All original wills shall remain in the clerk's office, among the records of the court, where the same shall be proved, and to the said wills any person may have access, as to the other records.—Rev., 3129.

3388. Certified copy of will proved in another state.—When a will, made by a citizen of this state, is proved and allowed in some other state or country, and the original will can not be removed from its place of legal deposit in such other state or country, for probate in this state, the clerk of the superior court of the county where the testator had his last usual residence or has any property, upon a duly certified copy or exemplification of such will being exhibited to him for probate, shall take every order and proceeding for proving, allowing and recording said copy as by law might be taken upon the production of the original.—Rev., 3130.

Note.—See s. 1619 of Revisal.

3389. Made out of state, how proven.—Whenever it is suggested to the clerk of the superior court, by affidavit or otherwise, that a will has been made without the state, or that a will has been made in the state, and the witnesses thereto have moved out of the state, disposing of or charging land or other property within the state, the clerk of the superior court of the county where the property is situated may issue a commission to such person as he may select, authorizing the commissioner to take the examination of such witnesses as may be produced, touching the execution thereof, and upon return of such commission, with the examination, he may adjudge the said will to be duly proved or otherwise, as in cases on the oral examination of witnesses before him, and if duly proved, such will shall be recorded.—Rev., 3131.

3390. Where witnesses reside in different county, how proven.—When a will is offered for probate in one county of this state and the witnesses reside in another county, the clerk of the court before whom such will is offered shall have power and authority to issue a subpoena for said witnesses requiring them to appear before him and prove said will; and said clerk shall likewise have power and authority to issue a commission to take the deposition of said witnesses when they reside more than seventy-five miles from the place where the will is to be probated, such deposition and commission to be returned and the clerk to adjudge the will to be duly proven.—Rev., 3132.

3391. Nonresident's will, recorded; proof.—Whenever any will made by a citizen or subject of any other state or country is duly proved and allowed in such state or country according to the laws thereof, a copy or exemplification of such will, duly certified and authenticated by the clerk of the court in which such will has been proved and allowed, if within the United States, or by any ambassador, minister, consul or commercial agent of the United States under his official seal when produced or exhibited before the clerk of the superior court of any county wherein any property of the testator may be, shall be allowed, filed and recorded in the same manner as if the original and not the copy had been produced, proved and allowed before such clerk. But when any will contains any devise or disposition of real estate in this state, such devise or disposition shall not have any validity or operation, unless the will is executed according to the laws of this state; and that fact must appear affirmatively in the certified probate or exemplification of the will; and if it do not so appear, the clerk before whom the copy is exhibited shall have power to issue a commission for taking proofs, touching the execution of the will, as prescribed in the preceding section; and the same may be adjudged duly proved, and shall be recorded as herein provided.—Rev., 3133.

3392. Probates validated.—In all cases of the probate of any will heretofore made in common form before any clerk of the superior

courts of this state, where the testimony of the subscribing witnesses has been taken in the state or out of it by any commissioner appointed by said clerk or taken by any other clerk of the superior court in any other county in this state, and the will admitted to probate upon such testimony, the proceedings are validated.—Rev., 3134.

5. Caveat.

3393. When and how filed.—At the time of application for probate of any will, and the probate thereof in common form, or at any time within seven years thereafter, any person entitled under such will, or interested in the estate, may appear in person or by attorney before the clerk of the superior court and enter a caveat to the probate of such will; and a caveat to any will heretofore admitted to probate must be entered within seven years from and after the ratification of this act: Provided, that if any person entitled to file a caveat be within the age twenty-one years, or a married woman, or insane, or imprisoned, then such person may file a caveat within three years after the removal of such disability.—Rev., 3135; Laws 1907, c. 862.

3394. Cause transferred to trial docket, when.—Upon any caveator giving bond, with sufficient surety to be approved by the clerk, in the sum of two hundred dollars, payable to the propounder of the will, conditioned to pay all costs which may be adjudged against such caveator in the superior court, by reason of his failure to prosecute his suit without effect, or deposit the money or give a mortgage in lieu of such bond, or shall file affidavits and satisfy the said clerk of his inability to give such bonds or secure such costs, the clerk shall transfer the cause to the superior court for trial; and he shall also forthwith issue a citation to all devisees, legatees or other parties in interest within the state, and cause publication to be made, for six weeks, in some newspaper printed in the state, for nonresidents to appear at the term of the superior court to which the proceeding is transferred, and to make themselves proper parties to the said proceeding, if they choose. At the term of said court to which such proceeding is transferred, or as soon thereafter as motion to that effect shall be made by the propounder, and before trial, the judge shall require any of the persons so cited, either those who make themselves parties with the caveators, or whose interests appear to him antagonistic to that of the propounders of the will, and who shall appear to him to be able so to do, to file such bond within such time as he shall direct and before trial, and on failure to file said bond the judge shall dismiss the proceeding.—Rev., 3136.

3395. Filing of, suspends proceedings under will.—Where a caveat is entered and bond given, the clerk of the superior court shall forthwith issue an order to any personal representative, having the estate in charge, to suspend all further proceedings in relation to the estate, except the preservation of the property and the collection of debts, until a decision of the issue is had.—Rev., 3137.

6. Construction.

3396. Devise presumed a fee simple.—When real estate shall be devised to any person, the same shall be held and construed to be a devise in fee simple, unless such devise shall, in plain and express words, show, or it shall be plainly intended by the will, or some part thereof, that the testator intended to convey an estate of less dignity.—Rev., 3138.

3397. Valid only after probate; conclusiveness of probate.—No will shall be effectual to pass real or personal estate, unless it shall have been duly proved and allowed in the probate court of the proper

county, and a duly certified copy thereof shall be recorded in the office of the superior court clerk of the county wherein the land is situate, and the probate of a will devising real estate shall be conclusive as to the execution thereof, against the heirs and devisees of the testator, whenever the probate thereof, under the like circumstances, would be conclusive against the next of kin and legatees of the testator.—Rev., 3139.

3398. What property passes by will.—Any testator, by his will duly executed, may devise, bequeath, or dispose of all real and personal estate, which he shall be entitled to at the time of his death, and which, if not so devised, bequeathed, or disposed of, would descend or devolve upon his heirs at law, or upon his executor or administrator; and the power hereby given shall extend to all contingent, executory, or other future interest in any real or personal estate, whether the testator may or may not be the person or one of the persons, in whom the same may become vested, or whether he may be entitled thereto under the instrument by which the same was created, or under any disposition thereof by deed or will; and also to all rights of entry for conditions broken, and other rights of entry; and also to such of the same estates, interests, and rights respectively, and other real and personal estate, as the testator may be entitled to, at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will.—Rev., 3140.

3399. Speak as of death of testator.—Every will shall be construed with reference to the real and personal estate comprised therein, to speak and take effect, as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.—Rev., 3141.

3400. Lapsed and void devises pass under residuary clause.—Unless a contrary intention shall appear by the will such real estate or interest therein, as shall be comprised or intended to be comprised in any devise in such will contained, which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will.—Rev., 3142.

3401. General gift includes estate to which testator has power to appoint.—A general devise of the real estate of the testator, or of his real estate in any place or in the occupation of any person mentioned in the will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend, as the case may be, which he may have power to appoint in any manner he may think proper; and shall operate as an execution of such power, unless a contrary intention shall appear by the will; and in like manner a bequest of the personal estate of the testator; or any bequest of personal property, described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description shall extend, as the case may be, which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.—Rev., 3143.

3402. Gifts to children dying, pass to issue.—When any person, being a child or other issue of the testator, to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person, shall die in the lifetime of the testator, leaving issue, and any such issue of such person as shall be living at the death of the testator, such devise or bequest shall not lapse, but shall take effect and vest a title to such estate in the issue surviving, if there be any, in the same manner, pro-

portions and estates as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.—Rev., 3144.

3403. Void as to after-born child.—Children born after the making of the parent's will, and whose parent shall die without making any provision for them, shall be entitled to such share and proportion of said parent's estate as if he or she had died intestate, and the rights of any such after-born child shall be a lien on every part of the parent's estate, until his several share thereof is set apart in the manner prescribed in this chapter.—Rev., 3145.

3404. Administrator c. t. a. must observe will.—In all cases where letters of administration with the will annexed are granted, the will of the testator must be observed and performed by the administrator with the will annexed, both in respect to real and personal property, and an administrator with the will annexed has all the rights and powers, and is subject to the same duties as if he had been named executor in the will.—Rev., 3146.

3405. Trustees under wills required to file inventories and accounts.—It shall be the duties of all trustees appointed in any will admitted to probate in the State of North Carolina, into whose hands assets come, under the provisions of said will, to file inventories of such assets, and annual and final accounts of the disposition of such assets, in the office of the clerk of the superior court of the county in which said will is admitted to probate, in the same manner as is provided by law for the filing of inventories and accounts by executors and administrators.

The clerk of the superior court in the county in which said will is probated shall have the power and authority to require the filing of such inventories and accounts as is given by law to require the filing of inventories and accounts by executors and administrators, and the said clerk of said court shall audit and record such inventories and accounts in his office, and shall receive the same compensation therefor as is allowed for inventories and accounts of executors and administrators.

This act shall not be construed to alter or effect the terms of any will in which a different provision is made for the filing of inventories and accounts, than is set out herein, nor to the trustees named in such will.—Laws 1907, c. 804.

PART VI.

FORMS.

No. 1.—Oath of Justice of the Peace.

NORTH CAROLINA,County.

I,, do solemnly and sincerely swear (or affirm), that I will support the constitution of the United States and that I will be faithful and bear true allegiance to the state of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the constitution of said state not inconsistent with the constitution of the United States, to the best of my knowledge and ability; so help me, God.

I,, do further solemnly swear (or affirm) that as a justice of the peace of the county of in all articles in the commission to me directed, I will do equal right to the poor and the rich, to the best of my judgment, and according to the laws of the state. I will not privately or openly, by myself or any other person, be of counsel in any quarrel or suit depending before me; the fines and amercements that shall happen to be made, and the forfeitures that shall be incurred, I will cause to be duly entered without concealment. I will not wittingly or willingly take, by myself or any other person for me, any fee, gift, gratuity or reward whatsoever for any matter or thing by me to be done by virtue of my office, except such fees as are or may be directed and limited by statute; but well and truly I will do my office of justice of the peace. I will not delay any person of common right, by reason of any letter or order from any person in authority to me directed, or for any other cause whatever; and if any letter or order come to me contrary to law I will proceed to enforce the law, such letter or order notwithstanding. I will not direct, or cause to be directed, to the parties any warrant by me made, but will direct all such warrants to the sheriffs or constables of the county, or the other officers or ministers of the state, or other indifferent persons, to do execution thereof; and finally, in all things belonging to my office, during my continuance therein, I will faithfully, truly and justly, and according to the best of my skill and judgment, do equal and impartial justice to the public and to individuals; so help me, God.

Subscribed and sworn to, thisday of, 19.., before me.
....., Clerk Superior Court.

No. 2.—Resignation of Justice of the Peace.

NORTH CAROLINA,County.

To the Clerk of the Superior Court ofCounty.

I,, justice of the peace oftownship,county, by these presents respectfully tender my resignation as such justice of the peace, to take effect from the date hereof.

Respectfully, Justice of the Peace.
This ..day of, 19...

No. 3.—Magistrate's commission when appointed by the clerk. Constitution, Art. iv, sec. 28.

NORTH CAROLINA,County.

To, Greeting:

Reposing special trust and confidence in your integrity and knowledge, I do hereby appoint you a justice of the peace for the county of, to fill the vacancy occasioned by the of, to take effect from date, and continue until your successor is chosen; and do hereby confer upon you all the rights, privileges and powers useful and necessary to the just and proper discharge of the duties of your appointment.

Witness my hand and official seal, this ..day of, 19..

....., Clerk Superior Court.

No. 4.—Justice's complaint and warrant.

NORTH CAROLINA,County,Township.

State)

vs.) Before, Justice of the Peace.

C.....D.....)

A B, being duly sworn, complains and says, that at and in said county, and in township, on or about the .. day of, 19.., C D did unlawfully and wilfully (state the offence distinctly and intelligibly) against the form of the statute in such cases made and provided, and contrary to law and against the peace and dignity of the State.

Subscribed and sworn to before me, this ..day of, 19..

....., Justice of the Peace.

No. 5.—Warrant to accompany complaint.

NORTH CAROLINA,County,Township.

State of North Carolina, to the Sheriff or any other lawful

officer ofCounty—Greeting:

For the causes stated in the affidavit which is hereto attached and by this reference made a part hereof, you are commanded forthwith to arrest C D, and him safely keep, so that you have him before me at my office in, or some other magistrate of said county, immediately to answer the above complaint, and be dealt with as the law directs.

Given under my hand, this .. day of, 19..

.....Justice of the Peace.

No. 6.—Recognizance—State warrant.

(Title as in No. 4.)

Be it remembered that on this ..day of, 19.., before the undersigned justice of the peace for said county, personally came C D, J K, and L M, and severally acknowledged themselves indebted to the state of North Carolina in the sum of \$...., lawful money of the United States.

The condition of this recognizance is such, that if the said C D shall appear at the next term of the superior court to be held in and for said county, at the court-house in, on theMonday after theMonday in, 19.., to answer the charge of....., and shall not depart the said court without leave, then this recognizance to be void; otherwise in full force.

Taken, subscribed, and acknowledged
before me

....., J. P.

No. 7.—Affidavit for removal.

(Title as in No. 4.)

A B, being duly sworn, deposes and says!

That in the above entitled action now pending before the said E F, the affiant has reason to believe and does believe, that he can not get a fair trial in said action before the said justice of the peace, and he therefore prays that the same may be removed to some other justice of the aforesaid township (or to the justice of some neighboring township if there be no other justice in said township) to be tried.

.....Affiant.

Sworn to and subscribed before me, this ..day of .., 19..

....., Justice of the Peace.

No. 8.—Warrant for larceny.

(Title as in No. 4.)

Whereas, A B hath this day complained on oath before me, a justice of the peace of the county aforesaid, that on or about the.. day of .., 19.., certain personal property, of the said A B, to-wit: (here describe the articles) were feloniously stolen, taken and carried away from the premises of him, the said A B, in the county aforesaid, and that he has just cause to suspect, and does suspect, that C D, late of said county, did feloniously steal, take and carry away the same, contrary to law and against the peace and dignity of the State:

These are therefore to command you forthwith to apprehend the said C D and bring him before me, or some other justice of the peace of said county, to answer the above complaint, and to be further dealt with according to law. Herein fail not.

Given under my hand, this .. day of .., 19..

.....Justice of the Peace.

Note.—The preceding form is given to guide justices in making out warrants for felonies. Before issuing the warrant, the statute requires the justice to satisfy himself, by the oath of the complainant, and any witnesses which may be produced by him, that a criminal offense has been committed. When that is done the warrant shall issue, in which shall always be recited the accusation against the defendant.—Ed.

No. 9.—Commitment on examination.

(Title as in No. 4.)

State of North Carolina, to the sheriff or keeper of the
common jail ofcounty—Greeting:

Whereas, C D, who was tried before the undersigned justice of the peace on the .. day of .., 19.., on a charge of .., was required to enter into recognizance in the sum of \$..., with security for his appearance at the next term of our superior court to be held in on the Monday after the Monday in .., 19.., to answer the said charge, which the said C D has failed to do:

You are hereby commanded to receive the said C D from the custody of, who is required to execute this commitment, into the common jail ofcounty, where he shall remain until he enters into the aforesaid recognizance as directed, before me or some other magistrate of this county, or until he is otherwise discharged according to law.

Dated ..day of .., 19 .., Justice of the Peace.

State of North Carolina, To....., Greeting:

You are hereby commanded to execute the foregoing commitment by conveying and delivering into the custody of the said sheriff or keeper of the common jail ofcounty the body of the said C D.

This ..day of .., 19.., Justice of the Peace.

Note.—Where an offense is not bailable, the fact that an examination of the defendant was had on the charge of, and that there was evidence tending to show the guilt of the defendant, shall be stated by the magistrate in his commitment, and then the keeper of the jail of the county shall be commanded to receive the defendant into the common jail of said county, there to remain until he is discharged according to law.—Ed.,

No. 10.—Recognizance of witnesses.

(Title as in No. 4.)

Know all men by these presents: That we, L M, N O, and P Q, witnesses in the above entitled action for the State, acknowledge ourselves indebted to the State of North Carolina in the sum of \$...., which indebtedness is each and several, and to be levied upon our goods, chattels, lands, and tenements.

But the condition of the above obligation is such that if the above bounden shall each personally appear at the next term of the superior court of.....county, to be held on the..Monday in, 19.., in....., there to give evidence in behalf of the state, in the above entitled action against C D on the charge of....., and not depart the said court without leave, then this obligation to be void; otherwise to be in full force and virtue.

L. M.
N. O.
P. Q.

Acknowledged before me this..day of...., 19..

....., Justice of the Peace.

No. 11.—Commitment of witnesses.

(Title as in No. 4.)

State of North Carolina, to the sheriff or keeper of the common jail of.....county—Greeting:

In the above entitled action L M, a witness in behalf of the state, having been required to enter into recognizance with surety in the sum of \$.... by the undersigned, a justice of the peace of said county, for his appearance at the next term of the superior court of said county to be held at the court-house in ... on .. Monday in, 19.., to testify in said action in behalf of the state; and the said L M having failed to comply with said requirement, you are therefore commanded to receive the said L M from the custody of....., who is required to execute this commitment, into the common jail of said county, there to remain until he complies with the above recited order, or until otherwise discharged according to law., Justice of the Peace.

Dated this..day of...., 19

No. 12.—Commitment of defendant in justice's final jurisdiction.

(Title as in No. 4.)

State of North Carolina, to the sheriff or to the keeper of the common jail of.....county—Greeting:

Whereas, C D, the prisoner herewith sent you, in the custody of...., who is required to execute this commitment, has this day been convicted before me, an acting justice of the peace, in and for.....township in said county, on the charge of....., and sentenced to imprisonment for the period of...days, and to pay costs.

You are therefore commanded to receive the said C D into the common jail of the county of....., there to remain until the expiration of the time aforesaid, and he shall remain in prison after the expiration of the time fixed for his imprisonment, until the costs shall be paid, or he shall otherwise be discharged according to law.

This..day of...., 19 , Justice of the Peace.

State of North Carolina,

To.....—Greeting:

You are hereby commanded to execute the foregoing commitment by conveying and delivering into the custody of the said sheriff or keeper of the common jail of.....county the body of the said C D.

This..day of...., 19 , Justice of the Peace.

No. 13.—Magistrate's subpoena—Criminal.

(Title as in No. 4.)

State of North Carolina, to the sheriff or any other lawful
 officer of.....county—Greeting:

You are hereby commanded to summon L M to appear before the undersigned, a justice of the peace in and for said county, at.....in said county, on the .. day of .., 19.., at .. o'clock .. m., to give evidence in a criminal action then and there to be tried, wherein the State of North Carolina is plaintiff and C D is defendant, on the part of the ...

Herein fail not, and of this process make due return.

Given under my hand, this.. day of...., 19..

....., Justice of the Peace.

No. 14.—List of names and offences.

NORTH CAROLINA,County,Township.

To....., clerk of the superior court of.....county:

The following is a list of the criminal actions tried before me and finally disposed of since the last term of the superior court, held on the..Monday of....., 19..:

1st. State vs. A B and C D; defendants guilty of an affray and fined \$5 and costs.

2d. State vs. R S; defendant charged with an assault on O M; not guilty; costs paid by O M.

I also send herewith the papers in the above cases.

....., Justice of the Peace,Township.

No. 15.—Mittimus for a felony.

(Title as in No. 4.)

State of North Carolina, to....., constable of.....county, and
 to the keeper of the common jail of.....county:

C D, late of the aforesaid county, having been arrested by the said, one of the constables of said county, on a charge of a felony alleged to have been committed by him, the said C D, in stealing a....., the property of G H, in said county; and whereas, the said C D, having been examined by me, one of the justices of the peace of said county, concerning said charge, and it appearing that there is probable cause to believe the said C D to be guilty thereof, and the said C D having failed to give bail for his appearance at the next term of our superior court, as required by me:

You, said....., are therefore commanded to convey and deliver into the custody of the keeper of said jail the body of the said C D; and you, the said keeper of said jail, are hereby required to receive the said C D into your custody in the said jail, there to remain until he shall give recognizance or bail in the sum of \$....., to be justified before, and conditioned for his appearance at the next term of our superior court, or until he shall otherwise thence be delivered by due course of law.

Dated this..day of...., 19..

....., Justice of the Peace.

No. 16.—Complaint to obtain peace warrant.

NORTH CAROLINA,County,Township.

State and A B)

vs.)

Before....., Justice of the Peace.

C.....D.....)

A B, being duly sworn, complains, on oath, to....., one of the justices of the peace of said county, that C D did, on the..day of....,

19, unlawfully and wilfully threaten (here state offence giving the circumstances and language of the threat); and the said complainant says that he has reason to fear and does fear, that the said..... will commit the offence so threatened, and will do him serious bodily injury (or, and will do serious injury and damage to his property) and prays that the said.....may be required to find sureties to keep the peace.

Sworn to before me, this..day of...., 19..
....., Justice of the Peace.

Note.—The warrant will be appended as in No. 5.—Ed.

No. 17.—Recognizance—peace warrant.

(Title as in No. 16.)

Be it remembered, that on this..day of...., 19.., before the undersigned justice of the peace for said county, personally came C D, N O, and R P, and severally acknowledged themselves indebted to the State of North Carolina in the sum of \$...., (not to exceed \$1,000) lawful money of the United States.

The condition of this recognizance is such, that if the said C D shall appear before....., a justice of the peace of said county, on the..day of...., 19.., (within a period of six months from the date hereof) and not depart the court without leave, and in the meanwhile keep the peace and be of good behaviour towards all people of the State of North Carolina; and particularly towards....., then this recognizance to be void; otherwise in full force.

Taken, subscribed and acknowledged )	.....
before me. )	.....
....., Justice of the Peace )	.....

No. 18.—Commitment in peace warrant.

(Title as in No. 16.)

State of North Carolina, to the sheriff or keeper of the
common jail of.....county—Greeting:

Whereas, A B this day complained to me, a justice of the peace for said county, in writing, on oath, that C D did, on the..day of...., 19..: (Here state the offense charged.)

And whereas, it appeared to me, upon the examination of R S, duly made on oath, and reduced to writing, and subscribed, that there were just reasons to fear the commission of the said offence by the said C D: the said C D, on being brought before me by my warrant, was required to enter into a recognizance in the sum of \$...., with sufficient surety, to appear before my court on the..day of...., 19.., and not depart the same without leave, and in the meanwhile to keep the peace and be of good behavior towards the people of the state, and particularly towards the said A B. And whereas, the said C D has failed to find said security, you are therefore commanded forthwith, from the custody of, who is required to execute this commitment, the said C D to receive and him safely keep in the common jail of the said county until he shall find such security, or be thence discharged by due course of law.

Given under my hand, the..day of....., 19..
....., Justice of the Peace.

State of North Carolina, to.....—Greeting:

You are hereby commanded to execute the foregoing commitment by conveying and delivering into the custody of the said sheriff or keeper of the common jail of.....county the body of the said C D.

This..day of...., 19..
....., Justice of the Peace.

No. 19.—Complaint to obtain search warrant,

NORTH CAROLINA,County,Township.

State)

vs.

C..... D.....) Before....., Justice of the Peace.

A B, of said county, being duly sworn, deposes and complains that on or about the .. day of .., 19.., at .., certain property, to-wit: of the value of .. dollars, was feloniously stolen, taken and carried away from the possession of; and the said A B further deposes, that he has reasonable grounds to believe the said property, or a part thereof, to be concealed on the premises of one .., situated in ..,

And the said .., on his oath, further deposes, that the grounds for his suspicion are as follows, viz.: (Here state grounds of suspicion.)

And the said A B prays that a warrant may issue, to make a search for the said .. on the premises of the said .. according to the statute in such case made and provided.

A B, Affiant.

Sworn to and subscribed before me, this .. day of .., 19..

....., Justice of the Peace.

No. 20.—Search warrant.

(Title as in No. 19.)

State of North Carolina, to the sheriff or any other lawful officer of county—Greeting:

Whereas, A B of said county and state, has this day made affidavit before me, the undersigned, a justice of the peace of said county, that certain articles of personal property, to-wit: (here describe articles) were stolen from him on or about .. day of .., 19.., and that he has reason to believe that they are in the possession, or on the premises, of one C D, on street, in the city of .., N. C.:

You are therefore hereby authorized and commanded forthwith to enter into the aforesaid house of the said C D and make diligent search for the said goods and chattels; and if you shall there find the same, or any part thereof, you will forthwith seize the same and arrest the person having the same in possession or on whose premises the same may be found and bring the person or persons so arrested and the goods and chattels so found before me, that further proceedings may be had in the premises, according to law.

Dated this .. day of .., 19.. .., Justice of the Peace.

No. 20½.—Complaint for cruelty to animals.

North Carolina, County, Township.

State

vs.

C..... D..... } Before, Justice of the Peace.

A B, being duly sworn, deposes and says: That C D, the defendant above named, on or about the .. day of .., 19.., in township, county, did unlawfully and wilfully wound, injure, torture, torment, cruelly beat and needlessly mutilate a certain useful beast, to-wit, a certain .., being the property of the said A B, against the form of the statute in such cases made and provided, and contrary to law, and against the peace and dignity of the state.

....., Affiant.

Sworn to and subscribed before me, this .. day of .., 19..

....., J. P.

Note.—The warrant should be appended to above complaint as in No. 5.—Ed.

No. 21.—Complaint for trespass upon lands.

NORTH CAROLINA,County,Township.

State	}	Before....., Justice of the Peace.
vs.		
C..... D.....		

A B, being duly sworn, complains and says: That at and in said county, and in said township, on or about the..day of...., 19.., C D did unlawfully and wilfully trespass and go and enter upon the lands of the said A B, after having been forbidden so to do by the said A B. And the affiant further says, that the said C D trespassed upon his said lands maliciously and to the injury of affiant without any lawful purpose, not having been authorized to search for cattle or other live stock by any justice of the peace, against the form of the statute in such case made and provided, and contrary to law and against the peace and dignity of the state. Wherefore the affiant prays that a warrant be issued against the said C D to the end that he may be required to answer the complaint of this affiant.

....., Affiant.
Sworn to and subscribed before me, this..day of...., 19..
....., Justice of the Peace.

No. 22.—Warrant in trespass.

(Title as in No. 21.)

NORTH CAROLINA,County,Township.

State of North Carolina, to the sheriff or any other lawful officer of.....county—Greeting:

For the causes stated in the attached affidavit, which is by this reference made a part hereof, you are hereby commanded forthwith to arrest C D, and him safely keep, so that you have him before me at my office intownship, or before some other magistrate of said county, immediately to answer the above complaint, and be dealt with as the law directs.

Given under my hand, this ..day of...., 19..
....., Justice of the Peace.

No. 23.—Summons—common form.

NORTH CAROLINA,County,Township.

A..... B.....	}	Before....., Justice of the Peace.
vs.		
C..... D.....		

State of North Carolina, to any constable or other lawful officer of.....county—Greeting:

You are hereby commanded to summon....., defendant, to appear before the undersigned....., one of the justices of the peace for the county of....., on...., the..day of...., 19.., at..o'clock..m., at his office in...township (or elsewhere, as the case may be), in said county, to answer the complaint of....., plaintiff, in a civil action, for the recovery of \$.....and...cents, and interest on \$.....from...., 19.., until paid, due by... and demanded by said plaintiff; and for costs.

Herein fail not, and of this summons make due return.

This..day of...., 19..
....., Justice of the Peace.

Note.—On the back of the summons should be endorsed: "No.; A B vs. C D. Summons—before, J. P., township, county. Received ... day of, 19... Served ... day of, 19.., by reading summons to C D, defendant., constable. Costs, \$....."

No. 24.—Judgment when demand exceeds \$200.

(Title as in No. 23.)

It appearing to the court, that the plaintiff's demand in this action exceeds \$200 exclusive of interest, it is therefore adjudged that the same be dismissed, and judgment is hereby rendered against the said A B, plaintiff, for the costs of this action, to-wit. \$....

....., Justice of the Peace.

Done this..day of...., 19..

Note.—If the plaintiff remits the excess over \$200, he shall do so at the time of filing his complaint, and direct the justice to make the entry as set forth in section 30. He may then proceed for \$200 and the interest on the same.—Ed.

No. 25.—Answer where title to real estate is in question.

(Title as in No. 23.)

The defendant herein answering the complaint of the plaintiff says:

1. That the allegations of paragraph 1 and 2 of complaint are untrue.
2. That the plaintiff can not maintain his action against the defendant, and especially in this court, because the premises described in the complaint, at the time when the rent for which said action was brought was alleged to be due, was and is now the land and freehold of one J D, and not that of the plaintiff; nor was the plaintiff then, nor is he now, entitled to the possession thereof; and the defendant further answers that the title to said premises was, at the time aforesaid, and is now, in said J. D., and will come in question on the trial of this action.

Dated this..day of...., 19.. , Defendant.

No. 26—Judgment in answer to title.

(Title as in No. 23.)

It appearing from the answer and proof of the defendant that the title to real estate is in controversy in this action, it is ordered that the action be dismissed, and judgment is rendered against the plaintiff for \$....., costs.

Dated this .. day of, 19..

....., Justice of the Peace.

No. 27—Judgment for money.

(Title as in No. 23.)

The summons in this action having been returned as personally served on the defendant on the .. day of, 19.., and both parties appearing before me (in person or by attorney, as the case may be): Upon the hearing of allegations and proofs, on motion of the plaintiff's attorney, it is adjudged that the plaintiff do recover of the defendant the net sum of \$...., with interest on \$.... from the .. day of, 19.., until paid, together with \$.... costs and disbursements. Total judgment and costs, \$.....

Done this .. day of, 19.. , Justice of the Peace.

No. 28—Transcript of Judgment.

(Title as in No. 23.)

Judgment in the above-entitled action was rendered for the plaintiff and against the defendant, the .. day of, 19.., for the amount of \$.... and interest on \$.... from the .. day of, 19.., until paid; costs, \$..... Total, \$.....

I certify that the foregoing is a true transcript from my docket of the judgment rendered in said action by me.

This .. day of, 19.. , Justice of the Peace.

No. 29—Magistrate's execution.

(Title as in No. 23.)

STATE OF NORTH CAROLINA,

To any constable or other lawful officer of county—Greeting:

Whereas, judgment has been rendered before me, the undersigned, against C D, defendant, in favor of A B, plaintiff, for the sum of \$...., and for \$...., costs:

These are therefore to command you forthwith to levy of the goods and chattels of the said C D, (except such as are exempt by law), the amount of said judgment, with interest on \$.... from the .. day of .., 19.., till paid, and make due return according to law within sixty days from date hereof.

Done this .. day of .., 19.., Justice of the Peace.

No. 30—Stay of execution.

When the stay of execution is prayed, the justice shall grant the same upon the defendant's giving his surety, who shall sign the following entry upon the docket of the justice:

"Upon the foregoing judgment a stay of execution is prayed and the same is granted for the space of days, the defendant giving as surety for the payment of the judgment, with interest thereon till paid, and costs, G H, who acknowledges and signs the same in my presence, and who is approved by me. G. H."

....., Justice of the Peace.

Note.—The defendant may have ten days to give his surety to stay an execution, and if the execution issues during that time, and the surety is given, the execution should be recalled by an order directed to the constable by the justice, until the expiration of the stay, when it may re-issue against the principal or the surety, or both, if the judgment remains unpaid.—Ed.

No. 31—Affidavit to re-hear.

(Title as in No. 23.)

C D, defendant in the above-entitled action (or A B, plaintiff, as the case may be), makes oath that he was unavoidably absent from the trial in said action wherein plaintiff (or defendant) obtained judgment against him, and that the reason of said absence was caused by the sickness of the affiant (or state any other fact which caused the absence); that the affiant was thereby prevented from defending (or prosecuting, as the case may be), said action, as he desired; and he therefore prays that the same may be opened, to the end that the said action may be re-heard upon its merits.

C D, defendant, or L M, attorney.

Sworn and subscribed before me, this .. day of .., 19...

E F, Justice of the Peace.

No. 32—Summons for re-hearing.

(Title as in No. 23.)

State of North Carolina, to any constable or other

lawful officer of county—Greeting:

Whereas, C D, defendant above named (or A B, plaintiff above named), has applied by affidavit, which is filed for a re-hearing in the above-entitled action, wherein judgment was rendered against the said defendant (or plaintiff) in his absence, at the trial thereof, before the undersigned on the .. day of .., 19..; and such application having been allowed, and the cause opened for reconsideration:

Now, therefore, we command you to summon the defendant (or plaintiff) to appear before, one of the justices of the peace for the

county of, on the .. day of, 19.., at, in said county; when and where the complaint will be re-heard, and the same proceedings be had as if the case had not been acted on; and have you then and there this precept, with the date and manner of its service.

Herein fail not. Witness our said justice, this .. day of, 19...
....., Justice of the Peace.

No. 33.—Order recalling execution.

(Title as in No. 23.)

The State of North Carolina, to—Greeting:

Whereas, (etc., same as first paragraph in No. 32); and whereas, you have in your hands an execution issued upon the said judgment:

Now, therefore, you are hereby commanded to forbear all further proceedings on and under said execution and to return said execution forthwith to the undersigned justice.

This .. day of, 19... .., Justice of the Peace.

No. 34.—Judgment removed to another county.

When any person desires a justice's judgment removed from one county to another, he shall get the justice's transcript (see form No. 28) and have the clerk of the superior court of the county of the justice to append thereto the following certificate, under his seal:

"I,, clerk of the superior court of.....county, do hereby certify that, the person who subscribed the foregoing transcript and certificate was, at the date of the judgment therein mentioned, to-wit, on the...day of....., 19.., a justice of the peace in said county, and that the name subscribed to said transcript and certificate is in his own proper handwriting.

In witness whereof, I have hereunto set my hand and official seal, this....day of....., 19.. ..

(L. S.)

Clerk of the Superior Court of.....County.

No. 35.—Magistrate's Subpoena—Civil.

(Title as in No. 23.)

The State of North Carolina, to any constable or other

lawful officer of.....county—Greeting:

You are hereby directed and commanded to summon....., if to be found in your county, personally to be and appear before the undersigned, justice of the peace, at.....on the...day of, 19.., at....o'clock .. m., to give evidence in a civil action then and there to be tried, wherein.....is the plaintiff and..... is the defendant on the part of the.....*

Witness my hand, this....day of....., 19..

....., Justice of the Peace.

N. B.—The justice may, instead of a formal subpoena, indorse on the summons or other process an order for witnesses, substantially as follows: "The officer to whom the within process is directed will summon the following persons as witnesses for the plaintiff; and the following as witnesses for the defendant; and will notify all such witnesses to appear and testify at the time and place within named for the return of this process., Justice of the Peace.

Dated.....day of....19....

No. 36.—Subpoena "duces tecum."

(See also form No. 256.)

If any witness has a paper or document which a party desires as evidence at the trial, the justice will pursue form No. 35 as far down as the asterisk (*); and then add the following clause:

And you are further commanded to inform the said.....that he is commanded diligently to search for, enquire after, and bring with him, and produce at the time and place aforesaid (here describe the paper which the witness is required to produce.) (Conclude as in form No. 35.)

No. 37.—Form of oath to witness.

You swear that the evidence you will give as to the matters in difference between A B, plaintiff, and C D, defendant, shall be the truth, the whole truth, and nothing but the truth: So help you, God.

No. 38.—Proceedings against defaulting witness.

When a witness, under subpoena, fails to attend, the justice will note the fact in his docket by some such entry as the following: "R P, a witness summoned on behalf of the plaintiff, called and failed." If the party who suffers by default of the witness wishes to move for the penalty against him, he will serve substantially the following notice on the witness:

A..... B..... }
vs. } County of.....
C..... D..... }

To R P:

Take notice, that on the....day of....., 19.., the plaintiff (or defendant) in the above action will move, Esq., the justice before whom the trial of said action was had, on the .. day of, 19.., for judgment against you for the sum of \$.... forfeited by reason of your failure to appear and give evidence on said trial, as you were summoned to do.

Dated this....day of....., 19..

....., Plaintiff.

The justice will enter the proceedings on the foregoing notice on his docket as follows:

A..... B..... }
vs. } Justice's Court—Motion for Penalty.
C..... D..... }

..day of, 19..: A B (or C D) above named appears, and according to a notice filed and duly served on R P, moved for the penalty of \$.... forfeited by the said R P by reason of his failure to attend and give evidence on the trial of a cause, wherein A B was plaintiff and C D was defendant, tried before me at my office on the .. day of, 19.., as appears by entry duly made on my docket; when and where the said R P, a witness summoned on the part of the plaintiff in that action, was called and did fail.

R P appears and assigns for excuse "high water," and offers his own affidavit which is filed. He also offers as a witness in his behalf S S, who, being duly sworn, testifies that (state what S S says about the condition of the water at the time). R P having no other evidence closed the case on his part. Whereupon A B offered M Y as a witness, who, being sworn, testifies (state what witness says).

Neither party having any other evidence, and after hearing all the proofs and allegations submitted for and against the motion: It is adjudged, on motion of A B (or C D), that he do recover of R P the sum of \$...., penalty forfeited by reason of the premises, and the further sum of \$....; costs of this motion.

No. 39.—Endorsement by justice of another county.

NORTH CAROLINA,County,Township.

Before....., Justice of the Peace.

To any constable or other lawful officer of.....county—Greeting:

It appearing to my satisfaction that the within process is in the proper handwriting of, an acting justice of the peace of county, you are therefore commanded to execute the same in your county, if the defendant be found therein, and return the same to the justice from whom it originally issued. Herein fail not. Witness my hand, this .. day of, 19..

Justice of the Peace of County.

No. 40.—Certificate of clerk where process is sent to another county.

NORTH CAROLINA, County.

I, S W, clerk of the superior court of county, do hereby certify that E F, the person who issued the within process, was at the date of said process, to-wit, on the .. day of, 19.., an acting justice in said county. Witness my hand and official seal, this .. day of, 19..

....., Clerk of the Superior Court.

No. 41.—Complaint for goods sold.

NORTH CAROLINA, County, Township.

A..... B..... }
 vs. } Before, Justice of the Peace.
 C..... D..... }

The plaintiff, complaining of the defendant, alleges:

1. That on the .. day of, 19.., he sold and delivered to the defendant certain goods and merchandise, a detailed statement of which appears in an account filed with this complaint and made a part hereof and marked "A."

2. That the said defendant promised to pay the sum of \$.... for said goods and merchandise as charged in said account.

3. That the said defendant has not paid the same, though often demanded by said plaintiff.

Wherefore, the plaintiff demands judgment for \$...., and interest on \$.... from the .. day of, 19.., until paid, and the costs of this action.

A B, Plaintiff, or (J K, Attorney).

A B, being duly sworn, says that the foregoing complaint is true to his own knowledge, except as to matters stated on information and belief, and as to those matters, he believes it to be true.

A B, Plaintiff.

Sworn to and subscribed before me, this .. day of, 19..

....., Justice of the Peace.

Note.—Where co-partners sue or are sued, the title to the action should be as follows: "A B and C D, partners, trading under the firm name of A B & C D, vs. M N and O P, trading as M N & O P," giving all the names of the firm.—Ed.

No. 42.—Complaint against an administrator.

NORTH CAROLINA, County, Township.

Before, Justice of the Peace.

A..... B..... }
 vs. } Adm'r of estate of R S, dec'd.
 C..... D..... }

The plaintiff alleges:

1. That R S died intestate in county, on the .. day of, 19.., and that the defendant qualified and duly entered upon the dis-

charge of his duties as administrator of the estate of the said R S, as will appear by reference to the records of the superior court of said county.

2. That the plaintiff sold to the defendant's intestate certain articles of merchandise, which are enumerated in an account herewith filed and made a part of this complaint, and marked "A."

3. That the said account has not been paid, and no part thereof has been paid, though often demanded by plaintiff, and the same is still due him.

Wherefore, the plaintiff prays judgment for the entire amount of said account, to-wit, \$...., and interest on \$.... from until paid, also costs of this action., Plaintiff.

(Verification as in No. 41.)

No. 43.—Execution against an executor or administrator.

(Title as in No. 42.)

State of North Carolina, to any Constable or
other lawful officer of County—Greeting:

Whereas, judgment was rendered by the undersigned in the above-entitled action in favor of A B, plaintiff, and against C D, defendant administrator of the estate of R S, deceased, late of said county, on the .. day of .., 19.., for the sum of \$....; and, whereas, the sum of \$.... is due on said judgment:

You are therefore commanded to satisfy the said judgment out of the personal property of the said R S, in the hands of the said C D, administrator as aforesaid in your county, and to return this execution within sixty days after its receipt by you to this office.

This .. day of .., 19.., Justice of the Peace.

Note.—Execution can be issued by a magistrate against an executor or administrator on a justice's judgment only when the personal representative, by pleading, expressly admits assets; but said judgment should be docketed in the superior court in any other case.—Ed.

No. 44.—Answer.

(Title as in No. 42.)

The defendant, answering the complaint of the plaintiff, says:

1. That the allegations in paragraphs 1, 2 and 3 of the complaint are untrue and are denied.

2. That the allegations in paragraph 4 are untrue and are denied, except (state what was true in the paragraph).

And for a further defence the defendant says:

1. (Here give any new matters in answer to or avoidance of the complaint which is germane to the controversy.)

Wherefore, the defendant demands judgment, etc.

....., Defendant.

(Verification, if complaint is verified.)

No. 45.—Demurrer to complaint.

NORTH CAROLINA, County, Township.

A.....	B.....	} Before; Justice of the Peace.
	vs.	
C.....	D.....	

The defendant demurs to the complaint in this action, for that the said complaint does not state facts sufficient to constitute a cause of action (here state grounds of demurrer), or (for that the said complaint is not sufficiently explicit to enable the defendant to understand it).

(Signature of defendant or defendant's attorney.)

No. 46.—Demurrer to answer.

(Title as in No. 45.)

The plaintiff demurs to the answer of the defendant, for that the facts stated in the answer are not legally sufficient to constitute a defence to this action (here state grounds of objection to answer), or (for that the said answer is not sufficiently explicit to make the plaintiff understand it). (Signature of plaintiff or attorney.)

No. 47.—Judgment upon demurrer.

If the justice thinks the objection raised by the demurrer to the pleadings is well founded, he will make this entry on his docket: "Demurrer to the complaint (or to the answer) filed, heard and sustained; and, whereupon, it is ordered that the said pleading be amended without costs" (or upon payment of costs, as the case may be).

This order to amend the defective pleading is a matter of course, and is the only judgment which the justice can render upon demurrer. He can not give a final judgment in the cause at this stage, for the party may choose to amend his pleadings and try the case on the facts. If, however, the party refuses to amend the defective pleading, the justice will disregard the same, and proceed to render final judgment as follows: "The plaintiff (or defendant) having refused to amend his complaint (or his answer) demurred to, it is adjudged that the defendant go without day and recover of the plaintiff the sum of \$...., costs of this action" (or that the plaintiff recover of defendant the sum of \$.... damages, and the further sum of \$...., costs of this action).

If the justice deem the objection raised by the demurrer not well founded, he will enter in his docket as follows: "Demurrer to the complaint (or to the answer) filed, heard and overruled;" and he will then proceed to the evidence in the cause.

No. 48.—Offer of judgment.

(Title as in No. 45.)

To A..... B.....

Take notice, that the defendant hereby before answering offers to allow judgment to be taken against him by the plaintiff in the above action for the sum of \$...., with costs.

Dated .. day of, 19..

....., Defendant.

No. 49.—Acceptance of offer of judgment.

(Title as in No. 45.)

To C..... D.....

Take notice, that the plaintiff hereby accepts the offer to allow the plaintiff to take judgment in the above action for the sum of \$...., with costs, and the justice will enter up judgment accordingly.

A B, Plaintiff.

Dated this .. day of, 19..

N. B.—The justice will state all the proceedings in the actions, from the issuing of the summons down to the appearance of the parties and the complaint of the plaintiff, and then proceed as follows:

"Whereupon, the said defendant, before answering said complaint, made and served an offer in writing to allow the plaintiff to take judgment against him for the sum of fifty dollars and costs;* and the said plaintiff thereupon accepted such offer, and gave notice thereof to the defendant in writing; said offer and acceptance thereof being filed.

Now, therefore, judgment is accordingly rendered in favor of the

plaintiff and against the defendant for the sum of fifty dollars damages, and the further sum of \$.... costs."

If notice of acceptance is not given, the entry will be as follows: (Follow the form down to the asterisk*) and then add, "And the said plaintiff having refused to accept such offer, the defendant answered the complaint by denying," etc. (state the defence of the defendant down to the judgment, which, in case the plaintiff fails to recover more than the sum mentioned in the offer, will be entered thus):

"After hearing the proofs and allegations of the respective parties I adjudge that the plaintiff do recover the sum of fifty dollars damages, and the further sum of \$.... costs.

I further adjudge that the defendant do recover of the plaintiff the sum of \$.... costs, accruing subsequent to the offer of the defendant referred to."

No. 50.—Affidavit for continuance.

(Title as in No. 45.)

A B, plaintiff (or C D, the defendant), makes affidavit as follows:

1. That the affiant has used due diligence to be ready for trial.

2. That he can not now have a fair trial by reason of (here state circumstances), and if the ground of the application be the absence of a witness, the affidavit shall state that "L M, of the aforesaid county and state, is a material witness in behalf of affiant in this action, as he is informed and believes; that the said witness is absent without the consent or procurement of this affiant; and the absence of said witness, as this affiant is informed and believes, was caused by (here state cause); that the said L M was duly summoned by the constable of this township to be present at the trial of this action; that the affiant expects to prove by said witness that (here state facts); that the affiant believes he can secure the attendance of said witness at a future hearing of the action; and therefore prays that a continuance be granted him.

A B, Affiant."

Sworn before me, this .. day of, 19..

....., Justice of the Peace.

Note.—The foregoing forms in regard to pleading are given for those who desire to use written pleadings. They may be easily changed so as to suit ordinary actions. In complaint and answer, all that is necessary is a plain, concise statement of facts. If a partnership is either plaintiff or defendant, state the individual members of the firm. If a corporation is sued, the existence of the corporation should be shown. Each material allegation of the complaint should be denied by the answer, and not a general denial of all the allegations.—Ed.

No. 51—Docket entries.

(Title as in No. 45.)

...., 19.. Summons issued; returnable on the .. instant, at my office.

...., 19.. Summons returned, served on defendant by O P M, constable, on the .. instant; both parties appear, the plaintiff in person, the defendant by R H R, Esq., attorney.

The plaintiff complains of a promissory note executed by the defendant to him, dated, 19.., payable one day after date, for \$...., and also for goods sold and delivered to the defendant, and claims damages for \$.....

The defendant answers and denies each and every allegation in the complaint, and claims a set-off of \$.... for wood sold and delivered the plaintiff, and also of \$.... for work and labor performed for the plaintiff.

On joining issue of fact as above, the action is, by consent of parties, adjourned to the instant, at my office.

A venire is also issued at the plaintiff's (or defendant's) demand, returnable at the time and place last mentioned.

....., 19... The parties appear and proceed to the trial of the cause. The following jurors are returned as summoned upon the venire by O P M, constable. (Insert the names of all jurors summoned.) The following jurors, who are returned as summoned, do not appear. (Insert their names.) The following jurors appear according to the summons. (Insert their names.) The following jurors are sworn to try the action. (Insert their names.)

H P and J M, witnesses for the plaintiff, and W F, a witness for the defendant, are sworn and testify; J S, a witness on the part of the defendant, is offered, but objected to by the plaintiff on the ground (state the ground) and rejected.

Having heard the evidence (and the arguments of counsel, if any), the cause is submitted to the jury, who retire, under the charge of O P M, a constable duly sworn for that purpose, and afterwards return into open court and publicly deliver the verdict, by which they find in favor of the plaintiff for \$. . . . damages; whereupon, I adjudge that the plaintiff do recover of the defendant—

Damages,	. . . . .	\$.....
Costs,	. . . . .	.....

....., 19... Execution issued for above judgment to O P M, constable.

..... 19... Notice of appeal served on me by defendant; my fee paid and return to the appeal made by me.

Note.—If the action is tried by the justice without a jury, all that relates to the venire and the verdict in the above form must be left out, and judgment will be entered as follows: "After hearing the proofs and allegations of the respective parties, I do adjudge that the plaintiff recover," etc. (as above).

We can only give a general idea as to how these entries should be made in the justice's docket. Since each case has features peculiar to itself, so in each case the entries must conform to the facts as they actually occur; and when a return is made on an appeal to the superior court as prescribed in section 84, the facts, as they occurred on the trial, shall be stated in said return. (See Form 57.)—Ed.

No. 52—Form of venire.

The justice will make a list of the persons drawn by him as jurors, substantially as follows:

State of North Carolina, to; constable of county:

You are hereby directed to summon the following persons, viz.: (here name jurors to be summoned), to appear as jurors before me at my office, in your county, on the ... day of, 19.., at ... o'clock, for trial of a civil action now pending between A B, plaintiff, and C D, defendant then and there to be tried. And have you then and there the names of the jurors you shall summon, with this precept.

Dated this ... day of, 19...

....., Justice of the Peace.

On the back of the summons the constable shall endorse the names of the jurors summoned, and sign his name as constable.

No. 53—Form of juror's oath in magistrate's court.

You swear that you will well and truly try the matters in difference between A B, plaintiff, and C D, defendant, and a true verdict give thereon according to the evidence in the cause: So help you, God.

No. 54—Form of oath to constable in charge of the jury.

You swear that you will, to the utmost of your ability, keep the persons sworn as jurors on this trial together, in some private and convenient place, without any meat or drink, except such as may be ordered

by the court; that you will not suffer any communication, orally or otherwise, to be made to them; and that you will not communicate with them yourself, orally or otherwise, unless by order of the court. So help you, God.

No. 55—Summons against defaulting juror to show cause.

(Title as in No. 45.)

State of North Carolina, to any constable or other
lawful officer of county—Greeting:

We command you to summon R S to appear before, a justice of the peace for your county, at his office in said county, on ... day of, 19.., at ... o'clock ... m., to show cause why he, the said R S, should not be fined according to law, for his non-attendance as a juror before our said justice, at his office in said county, on the ... day of, 19.., in a certain cause then and there pending, in which A B was plaintiff and C D was defendant; and have you then and there this precept, with the date and manner of your service thereof.

Witness, our said justice, this ... day of, 19...
....., Justice of the Peace.

No. 56—Notice of appeal.

(Title as in No. 45.)

To, Esq., justice of the peace of county:

Take notice, that the defendant in the above-entitled action appeals to the superior court from the judgment rendered therein by you on the ... day of, 19.., in favor of the plaintiff for the sum of \$..... and costs, and the said appeal is taken because the said judgment is contrary to law and the evidence in the case.

J K, Attorney for Appellant.

Dated this ... day of, 19...

No. 57—Return to notice of appeal.

(Title as in No. 45.)

To the superior court of county:

An appeal having been taken in this action by the defendant, I, E F, the justice before whom the same was tried, in pursuance of the notice of appeal, do hereby certify and return that the following proceedings were had by and before me in the said action:

On the ... day of, 19.., at the request of the plaintiff,, I issued a summons in his favor and against the defendant, which is herewith sent. Said summons was, on the return day thereof, returned before me at my office; and at the same time and place, the parties appeared.

The plaintiff complained for goods sold and delivered to the amount of \$..... The defendant denied the right of the plaintiff to recover that amount of goods, on the ground that he had paid at the time of, or shortly after, the purchase of said goods, \$..... thereon; and he also claimed to have a set-off against the plaintiff to the amount of eighty-five dollars for board and lodging furnished to plaintiff, and work and labor done for him, and he claimed to be entitled to judgment against the plaintiff for \$..... (State any other defense or counter-claim instead of foregoing.)

Both parties offered evidence upon the claims so made by them, and after hearing their proofs and allegations, I rendered judgment in favor of the plaintiff and against the defendant on the ... day of, 19.., for \$..... damages, and the further sum of \$....., costs of the action.

I also certify that on the ... day of, 19.., the defendant served the annexed notice of appeal on me, and at the same time paid me my fee of \$..... for making my return.

All of which I send, together with the process and other papers in the cause.

Dated this ... day of, 19..

....., Justice of the Peace.

Note.—If the cause was tried by a jury, state the fact and set forth the verdict, with the judgment thereon. It is not necessary to set out in the return a copy of any process, pleading, affidavit or other paper. It is sufficient to refer to such paper as filed and as herewith sent. (See also Form No. 51.)—Ed.

No. 58—Undertaking on appeal.

North Carolina, county, township.

A..... B..... }
vs. } Undertaking on Appeal.
C..... D..... }

Whereas, on the ... day of, 19.., the recovered judgment against the before, a justice of the peace, for \$.....

And whereas, the said intends to appeal therefrom to the superior court of said county, and desires to stay all proceedings thereon:

Now, therefore, we and, of the county of, undertake, in the sum of \$...., that said appellant shall pay all costs and damages that may be awarded against him on such appeal; and we do also undertake, pursuant to the statute, that if said judgment, or any part thereof, be affirmed, or the appeal be dismissed, the said appellant shall pay the amount directed to be paid by the judgment, or the part of such amount as to which the judgment shall be affirmed, if it be affirmed only in part, and all damages which may be awarded against the appellant on such appeal.

This ... day of, 19..

No. 59—Justification of surety.

J H, one of the subscribers to the above undertaking, being duly sworn, says: That he is a resident and freeholder in this state, and is worth the sum of \$.... over and above all his debts and liabilities and exclusive of property exempt from execution.

(Signed) J..... H.....

Examination taken and sworn before me, this ... day of, 19..

....., Justice of the Peace.

No. 60—Order to stay execution.

North Carolina, county.

A..... B..... }
vs. } Before, clerk of the superior court.
C..... D..... }

Whereas, on the ... day of, 19.., A B, plaintiff in the above-entitled action, obtained a judgment against C D, defendant, before, a justice of the peace of township, county, for the sum of \$...., and costs; and whereas, the said C D has appealed to the superior court of said county, and has given before me a sufficient undertaking to stay any execution which may issue upon said judgment:

It is therefore ordered by the undersigned that all further proceedings in the court of the aforesaid justice in enforcing the aforesaid judgment cease; and if any execution has issued from said justice's court, that the same be returned thereto immediately, by the officer having the same, to await the hearing of the action by our superior court.

....., Clerk Superior Court.

To....., justice of the peace,county:

I hereby certify that the foregoing order has this day been made by me in respect to the above-entitled action, and you will govern yourself with reference to said action as indicated in said order.

....., Clerk Superior Court.

This..day of...., 19..

No. 61.—Recordari—Petition for.

NORTH CAROLINA,County.

A..... B..... }
vs. } Petition.
C..... D..... }

To the honorable.....judge of the superior court,
riding the.....judicial district.

The petition of C D, the defendant in the above entitled action, respectfully sheweth to your honor, that A B, the plaintiff in said action, obtained a judgment against him, before E F, a justice of the peace of said county, where the plaintiff and defendant reside, on or about the.. day of...., 19.., for the sum of \$...., and costs. Your petitioner further sheweth (here state the facts entitling the party to this remedy).

Your petitioner therefore prays your honor to grant to him a writ of recordari to be directed to the sheriff of said county, commanding, etc., and also a writ of supersedeas to be directed to the said justice, as well as the plaintiff and the constable commanding them to desist from all further proceedings in the premises.

J S, Attorney for Petitioner.

C D, being duly sworn, deposes and says, that the foregoing petition is true to his own knowledge, except as to matters stated upon information and belief and that as to those matters he believes it to be true.

Subscribed and sworn to before me, this..day of...., 19..

....., Clerk Superior Court.

No. 62.—Recordari—Fiat of the judge.

NORTH CAROLINA,County.

A..... B..... }
vs. } Fiat.
C..... D..... }

Upon reading the foregoing petition and affidavit, I do hereby order the clerk of the superior court of.....county to issue writs of recordari and supersedeas, according to the prayer of said petition, as soon as said C D shall give bond with good security before the said clerk, according to law, to the end that the said action may be sent on for trial in the superior court of said county.

....., Judge riding the.....Judicial District.

This..day of...., 19..

No. 63.—Recordari, Bond for.

NORTH CAROLINA,County—In the Superior Court.

(Title as in No. 62.)

Know all men by these presents, that we, C D and X Y, are held and firmly bound unto A B in the sum of \$...., for the payment whereof we bind ourselves, our heirs, executors and administrators, firmly by these presents.

Signed and sealed this..day of...., 19..

The condition of the above obligation is such, that whereas a judgment was obtained before E F, a justice of the peace of.....county, on or about the..day of...., 19.., in favor of the said A B and against the said C D for \$.., with interest thereon from the .. day of, 19.., and for costs; and whereas, the said C D hath prayed for and obtained a writ of recordari to cause the proceedings in the above entitled action to be sent up to the superior court of.....county, to be held at....., on the.....Monday of.....next:

Now, therefore, if the said C D shall prosecute said writ with effect, or, if he shall fail therein and have the said case decided against him, and shall pay the judgment of the said court and the costs, then this obligation to be void; otherwise to remain in full force and effect.

..... (Seal.)

..... (Seal.)

No. 64.—Recordari—Writ of.

(Title as in No. 62.)

State of North Carolina, to the sheriff of.....county, Greeting:

We command you, that you go in your proper person to E F, a justice of the peace of the county aforesaid, and cause to be recorded the summons, judgment and other proceedings in the above-entitled action lately pending before said justice, and that you have that record under your hand at our next superior court to be held for the county of....., at the court-house in....., on the..Monday of...next, and that you prefix the same day to the parties that they may then and there be ready to proceed in said action, and have you then and there this writ with your return thereon.

....., Clerk Superior Court.

This..day of...., 19..

No. 65.—Sheriff's return to writ of recordari.

By virtue of the within writ to me directed, I went to E F, the justice therein named, on the .. day of, 19.., in my proper person and caused a record to be made of the summons, judgment and other proceedings in the action mentioned in said writ, which record is in words and figures as set forth in the transcript hereto attached.

I also prefixed a day to the parties, as I was commanded to do in said writ, to-wit: the..Monday of...., 19..

Given under my hand, this..day of...., 19..

.....Sheriff of..... county.

No. 66.—Writ of supersedeas in recordari.

(Title as in No. 62.)

State of North Carolina, to the sheriff of.....county, Greeting:

Whereas, A B obtained a judgment against C D on the..day of...., 19.., before E F, a justice of the peace of county, for the sum of \$.... and costs, and caused an execution to be issued thereon and placed in the hands of G H, a constable of.....township, said county, and the said C D has obtained a writ of recordari to remove the said judgment and other proceedings to the superior court of said county:

We therefore command you, that you cause the said G H, or any other officer having an execution in his hands on said judgment, to desist from all further proceedings thereon.

And further, you will deliver copies of this writ to said constable, or other officer, and to the said A B. And have you this writ at our said court at the court-house in, on the Monday in, 19..

....., Clerk Superior Court.

This..day of...., 19..

No. 67.—Affidavit for arrest on debt.

NORTH CAROLINA,County,Township.

A..... B..... }
 vs. } Before....., Justice of the Peace.
 C..... D..... }

A B, plaintiff above named, being duly sworn, deposes and says:

1. That the defendant, C D, is indebted to the plaintiff in the sum of \$.... on an inland bill of exchange, drawn on the..day of...., 19.., by defendant on the National Bank of Raleigh, North Carolina, payable at sight to the plaintiff.

2. That on the..day of...., 19.., the defendant applied to the plaintiff to purchase a bill of goods amounting to \$...., which the plaintiff offered to sell to the defendant for cash; that the defendant contriving to defraud the plaintiff, represented that he had money on deposit at said National Bank for more than the amount of the proposed purchase, and offered to give plaintiff a sight draft on said bank; that the plaintiff relying upon the representations of said defendant, and solely induced thereby, sold and delivered a bill of goods amounting to \$.... to the defendant, who thereupon drew the sight draft on said bank referred to; that on the..day of...., 19.., the plaintiff presented said draft at said bank for acceptance, when the same was not accepted for want of any funds in said bank to the credit of the defendant; that notice of non-acceptance was given to the defendant, who has wholly refused to pay the draft or any part thereof; that the representations made as aforesaid by the defendant were, and each and every of them was, as deponent is informed and believes, untrue; and that the defendant, as deponent is informed and believes, did not have, nor expect to have, any funds on deposit at said bank, at the time of making the representations above mentioned, but said defendant was then and is now wholly insolvent.

A B, Affiant.

Sworn to and subscribed before me, this..day of...., 19..

....., Justice of the Peace.

No. 68.—Affidavit against one who has removed or disposed of his property, or is about to do so.

(Title as in No. 67.)

A B, the plaintiff above-named, being duly sworn, deposes and says:

1. That the defendant C D is indebted to the plaintiff in the sum of \$...., for board and lodging furnished said defendant by the plaintiff from the..day of...., 19.., to the..day of...., 19..

2. That the said defendant has removed or disposed of his property with intent to defraud his creditors or is about to do so, with like intent, as affiant believes; (here state grounds of belief).

A B, Affiant.

Sworn to and subscribed before me, this..day of...., 19..

....., Justice of the Peace.

No. 69.—Undertaking on arrest.

(Title as in No. 67.)

Whereas, the plaintiff above named is about to apply (or has applied) for an order to arrest the defendant C D:

Now, therefore, we J J, of.....county, and P P, of.....county, undertake in the sum of \$...., payable to the defendant C D, (the sum must be at least \$100), that if the said defendant recover judgment in

this action, the plaintiff will pay all costs that may be awarded to the said defendant, and all damages which he may sustain by reason of his arrest in this action.

A B.....
J J.....
P P.....

Signed in my presence, this..day of...., 19..

....., Justice of the Peace.

Note.—Before issuing an order for arrest, a regular summons should be issued for the amount of the plaintiff's claim, which may be made returnable at the same time as the order of arrest. An order of arrest must be obtained before judgment in the action.—Ed.

No. 70.—Order of arrest.

(Title as in No. 67.)

State of North Carolina, to any constable or other lawful officer of.....county, Greeting:

For the causes stated in the annexed affidavit:

You are required forthwith to arrest C D, the defendant named above, and hold him to bail in the sum of \$...., (the sum should be at least the amount of the plaintiff's claim), and to return this order before the undersigned at his office in said county on the..day of...., 19.., at.. o'clock..m., of which return you will serve a notice on plaintiff or his attorney.

Dated this..day of...., 19..

....., Justice of the Peace.

No. 71.—Undertaking of bail on arrest.

(Title as in No. 67.)

Whereas, the above-named defendant, C D, has been arrested in this action:

Now, therefore, we B B, of.....county, (tailor) and D D, of.....county (merchant), undertake, in the sum of \$...., payable to the plaintiff, A B, (the sum should be the same as mentioned in the order of arrest), that if the defendant is discharged from arrest he shall, at all times, render himself amenable to the process of the court during the pendency of this action, and to such as may be issued to enforce judgment therein.

C D.....
B B.....
D D.....

Signed in my presence this..day of...., 19..

....., Justice of the Peace.

No. 72.—Notice of exception to bail.

(Title as in No. 67.)

To O M P, constable (or sheriff) of.....county:

Take notice, that the plaintiff does not accept the bail offered by the defendant in this action (and if the undertaking is defective in form or otherwise, add also), and further, he excepts to the form and sufficiency of the undertaking.

A B, Plaintiff, or
C S, Attorney for Plaintiff.

No. 73.—Notice of justification of bail.

(Title as in No. 67.)

To A B, plaintiff (or C S, attorney for plaintiff):

Take notice, that the bail in this action will justify before E F, a justice of the peace for said county, on the..day of...., 19..

C D (or attorney for C D), Defendant.

No. 74.—Notice of other bail.

(Title as in No. 67.)

Take notice, that R S, of.....county (physician), and Y Y, of.....county, (farmer), are proposed as bail, in addition to (or in place of) B B and D D, the bail already put in; and that they will justify (conclude as in last form). Date, etc.

No. 75.—Justification of bail.

(Title as in No. 67.)

On this..day of...., 19.., before E F, a justice of the peace for.....county, personally appeared B B and D D, (or R S and Y Y, as the case may be), the bail given by the defendant C D, in this action, for the purpose of justifying pursuant to notice; and the said B B, being duly sworn, says:

1. That he is a resident and freeholder in this state.
2. That he is worth the sum of \$.... (the amount specified in the order of arrest), exclusive of property exempt from execution.

And the said D D being duly sworn, says:

(As with the other bail.)

(And so on with each bail offered.)

(Signatures of bail.)

Examination taken and sworn to before me, this .. day of, 19...
....., Justice of the Peace.

No. 76.—Allowance of bail.

(Title as in No. 67.)

The bail of the defendant, D D, within mentioned, having appeared before me and justified, I do find the said bail sufficient and allow the same.

....., Justice of the Peace.

Dated this..day of...., 19..

No. 77.—Application for attachment.

To....., Esq., one of the justices of the peace in and for....county:
The undersigned applies for an attachment against the property of, on the ground set forth in the following affidavit.

This ... day of, 19....

.....

No. 78.—Affidavit by plaintiff.

North Carolina,county,township.

A..... B.....	} Before....., Justice of the Peace.
vs.	
C..... D.....	

A B, being duly sworn, says:

1. That C D, the defendant, is justly indebted to A B, the plaintiff, in the sum of \$....., as nearly as he can ascertain the same, over and above all discounts which the said defendant has against him, which debt arose from a (state any cause of action founded on contract, etc., as allowed by section 1214 infra, specifying the amount of the claim, and the grounds thereof.)

2. That the said defendant, (state any fact or facts, so as to bring the case within one of the classes in which an attachment may issue, as set forth in sections 1214 and 1215). (The facts must be stated positively and affirmatively, not merely upon information and belief, except where a fact is alleged with a particular intent, when the intent may be stated on information and belief, and the grounds for the belief given.) (See Form 79.)

A B, Plaintiff.

Sworn to and subscribed before me, this..day of...., 19..

....., Justice of the Peace.

No. 79.—Another form of affidavit.

(Title as in No. 78.)

A B, plaintiff above named, being duly sworn, deposes and says:

1. That the defendant C D, is indebted to plaintiff in the sum of \$.. for goods sold and delivered to said defendant by the plaintiff on or about the..day of...., 19..

2. That the said defendant has departed from this state, or keeps himself concealed therein, with intent, as plaintiff is informed and believes, (give grounds of belief) to avoid the service of a summons (or with intent, etc., to defraud defendant's creditors).

....., Plaintiff.

Sworn to and subscribed before me, this..day of...., 19..

....., Justice of the Peace.

No. 80.—Affidavit against foreign corporation.

North Carolina,county,township.

A.....	B.....	} Before....., Justice of the Peace.
vs.		
The Highlands Mining Co.		

A B, the plaintiff above named, being duly sworn, deposes and says:

1. That the defendant above named is indebted to the plaintiff in the sum of \$..... for the use and occupation of certain premises by permission of plaintiff, from the..day of...., 19.., until the..day of...., 19..

2. That the defendant is a foreign corporation, created under the laws of the state of.....

3. That the cause of action above stated, arose in this state.

....., Plaintiff.

(Sworn to as in preceding form.)

No. 81.—Form of publication to be made by plaintiff in attachment.

North Carolina,county,township.

A.....	B.....	} Attachment.
vs.		
C.....	D.....	

Seventy-five dollars, due by note (or otherwise, as the case may be). Warrant of attachment, returnable before E F, a justice of the peace for..... at his office at..... (or otherwise, as the case may be), on the..day of...., 19.., when and where the defendant is required to appear and answer or demur to the complaint.

Dated this..day of...., 19..

....., Plaintiff.

Note.—The above notice of attachment must be published for four weeks as prescribed in sections 1222 and 1226 *infra*, where the warrant of attachment is obtained, after the issuing of the summons. Below we give forms where service of the summons has to be made by publication. After the summons is issued by the justice and placed in the hands of sheriff or constable for service, if the defendant can not be found in the county of said officer, the following return should be made on the summons:

"Not to be found in.....county.

This..day of...., 19..

....., Sheriff (or constable)."

Then follows the affidavit of the plaintiff to obtain an order for publication of the summons, etc.

No. 82.—Affidavit of plaintiff to obtain service by publication.

North Carolina,county,township.

A..... B..... }
vs. } Affidavit.
C..... D..... }

A B, the plaintiff in the above-entitled action, makes oath that the defendant, C D, can not, after due diligence, be found within the state of North Carolina, that said plaintiff has a good cause of action against said defendant; (here state cause of action); that said defendant, formerly ofcounty, North Carolina, has departed from the state with intent to defraud his creditors, or to avoid the service of summons, or keeps himself concealed therein (or state any other cause of action mentioned in section 932); that the summons in said action was duly issued on..day of...., 19.., by E F, justice of the peace of said county, and returned by the sheriff (or constable) endorsed, "Not to be found in.....county."Affiant.

Sworn to and subscribed before me, this..day of...., 19..
....., Justice of the Peace.

No. 83.—Order of publication.

(Title as in No. 82.)

It appearing to the undersigned justice of the peace, from the affidavit of A B, the plaintiff in the above-entitled action, that the defendant can not, after due diligence, be found in the state, and that the plaintiff has a good cause of action against said defendant; and it further appearing that said defendant has departed from the state with intent to defraud his creditors, or to avoid the service of summons, etc.: It is therefore ordered by the court that notice of this action be advertised at the court-house door and four other public places in the county, for four successive weeks, setting forth the title of the action and stating the names of the parties and the amount of the claims, the issuing of the attachment, and a brief recital of the subject-matter and nature of the suit, and requiring the defendant to appear at the office of....., a justice of the peace of.....county, at....., in.....township, on the..day of...., 19.., and answer or demur to the complaint of said plaintiff.

This .. day of, 19.. Justice of the Peace.

Note.—Where attachment proceeding is in the superior court, notice and summons must be published in newspaper. See sections 1222 and 933 infra.

No. 84.—Notice of service by publication.

North Carolina,county,township.

A..... B..... }
vs. } Notice of summons and warrant of attachment.
C..... D..... }

The defendant above named will take notice that a summons in the above-entitled action was issued against said defendant on the..day of...., 19.., by....., a justice of the peace of.....county, North Carolina, for the sum of \$...., due said plaintiff by account (or otherwise, as the case may be), which summons is returnable before said justice, at his office at....., in said county, and in.....township on the..day of...., 19.. The defendant will also take notice that a warrant of attachment was issued by said justice on the..day of...., 19.., against the property of said defendant, which warrant is returnable before the said justice, at the time and place above-named for the return of the summons, when and where the defendant is required to appear and

answer or demur to the complaint, or the relief demanded will be granted.

This .. day of .., 19... .., Justice of the Peace."

Note.—The above notice is to be published once a week for four successive weeks, as required in sections 1222, 1226 and 933 infra.—Ed.

No. 85.—Plaintiff's undertaking.

(Title as in No. 78.)

Whereas, the plaintiff above named is about to apply for a warrant of attachment against the property of the above named defendant:

Now, therefore, we, J W B, of.....county, and W D M, of.....county, undertake in the sum of \$...., (the sum must be at least \$200) that if the said warrant be granted, and the defendant recover judgment in this action, or the attachment be set aside by order of the court, the plaintiff shall pay all costs that may be awarded to defendant in the same, and all damages which defendant may sustain by reason of such attachment, not exceeding said sum of \$200.

J W B.....

W D M.....

Signed and delivered in the presence of G W H, Esq., this the..day of....., 19..

....., Justice of the Peace.

No. 86.—Warrant of attachment.

(Title as in No. 78.)

State of North Carolina, to any constable

or other lawful officer of.....county, Greeting:

It appearing by affidavit to the undersigned that a cause of action exists in favor of the plaintiff against the defendant for the sum of \$...., and that the defendant is not a resident of this state (or otherwise as the fact may be), and the plaintiff having given the undertaking as required by law:

Now, therefore, you are commanded forthwith to attach and safely keep all the property of the said defendant C D, in your county, or so much thereof as may be sufficient to satisfy the said plaintiff's demand, with costs and expenses; and have you this warrant before E F, one of the justices of the peace for.....county, at his office in said county, on the..day of....., 19.., with your proceedings thereon.

Witness our said justice this..day of....., 19..

E F, Justice of the Peace.

No. 87.—Return endorsed on attachment.

I, L M, constable (or sheriff) of.....county, do hereby return that by virtue of the within attachment, I have seized and taken into my possession the tangible personal property (or have levied on the following described real estate, as the case may be), of the defendant within named, specified in the inventory hereunto annexed.

L M, Constable, (or sheriff.)

Dated this..day of....., 19..

No. 88.—Inventory of property attached.

(Title as in No. 78.)

I do hereby certify that the following is a true and just inventory of all the property seized or levied on by me under a warrant of attachment, issued in the above entitled action by E F, J. P., with a statement of the books, vouchers, papers, rights and credits taken into my custody by virtue of said warrant. (Insert list of property by items.)

I do further testify that the following property mentioned in the above inventory is perishable, and the expense of keeping the same until the termination of the suit would exceed one-fifth of its value; and I do hereby apply to this court for authority to sell the same. (Insert a list of perishable property.)

Dated..day of...., 19..

L M, Constable, (or sheriff.)

No. 89.—Order for sale of perishable property.

(Title as in No. 78.)

It appearing by the inventory returned by L M, constable (or sheriff), under the warrant of attachment granted in this action, that the following property mentioned in said inventory is perishable, to-wit: (insert here list of perishable property); and the said constable (or sheriff) having applied for a sale of such perishable property:

It is therefore ordered that the said property be sold by the said officer at public auction, at such time and place as he shall deem advisable, and that the said officer give notice of such sale as in the case of the sale of personal property on execution.

It is further ordered that the proceeds of such sale be retained by said officer and disposed of in the same manner as the property itself if the same had not been sold.

....., Justice of the Peace.

Dated this..day of...., 19..

No. 90.—Defendant's undertaking in replevin.

(Title as in No. 78.)

Whereas, L M, constable (or sheriff) of.....county, pursuant to a warrant of attachment in the above-entitled action, dated the..day of...., 19.., to him directed by E F, justice of the peace of.....county, did on the..day of...., 19.., seize and levy on the following-named property of said defendant, to-wit (insert list of property):

Now, therefore, we,....., of.....county, and....., of.....county, undertake in the sum of \$...., (the sum must be double the value of the property), that said C D, defendant, if said property be delivered to him, will return the same to the said officer, if return thereof be adjudged by the court, and pay all costs awarded against him; and that if return of said property can not be had then the defendant will pay to said plaintiff the value of said property and all costs and damages that may be awarded against him in said action.

.....
.....

Signed and delivered in the presence of E F, Esq., this..day of..., 19..
....., Justice of the Peace.

No. 91.—Notice of levy on property incapable of manual delivery.

(Title as in No. 78.)

To H B.....

Take notice, that by warrant of attachment issued in this action, a certified copy of which is herewith served upon you, I have levied upon, and do hereby levy upon, your indebtedness, amounting to \$...., or thereabouts, to the defendant above-named. (Describe, as particularly as possible, the shares, debts or property levied upon.)

Dated ..day of...., 19..

....., Constable.
The officer will endorse on the copy of the attachment served with the above notice, the following certificate: "I do hereby certify that the within is a true copy of the warrant of attachment in my possession issued in this action, and of the whole thereof.

Done..day of, 19..

....., Constable."

No. 92.—Summons to third person to appear and be examined.

(Title as in No. 78.)

State of North Carolina, to L M, Constable,
or other lawful officer of.....county, Greeting:

A B, plaintiff in the above action, having obtained a warrant of attachment against the property of C D, the defendant in said action, and it appearing to the undersigned that R S is indebted to (or has effects of), the defendant in the said attachment:

Now, therefore, you are commanded to summon the said R S to appear before me at my office in.....township, at 12 o'clock m., on the ..day of...., 19.., to answer upon oath what he owes the defendant C D, and what effects of the said C D the said R S has in his possession, and had at the service of said attachment. The said R S will at said time and place answer on oath whether there are in the hands of any other person any debts or effects belonging to the said defendant, and what person, to his knowledge and belief. And let the said R S take notice that if he fail to appear, judgment will be entered against him as is authorized by law in such cases. Herein fail not.

....., Justice of the Peace.

Dated this..day of...., 19..

No. 93.—Execution against garnishee.

(Title as in No. 78.)

State of North Carolina, to any constable
or other lawful officer of.....county, Greeting:

Whereas, in pursuance of a warrant of attachment dated the..day of...., 19.., issued by E F, a justice of the peace of said county, in an action wherein A B was plaintiff and C D was defendant, judgment was rendered in said action on the..day of...., 19.., in favor of the plaintiff, and against the defendant, in the sum of \$....; and whereas, R S was summoned to appear before the said justice on the..day of...., 19.., to answer, upon oath, what he owed to the defendant, and what effects of the defendant he had in his hands; and whereas, it was ascertained in said action that R S was indebted to said defendant in the sum of \$...., and had in his hands the following effects of the defendant, to-wit: (here insert list of effects.) And whereas, judgment was rendered in said action on the..day of...., 19.., in favor of said plaintiff and against R S in the sum of \$....

Now, therefore, we command you that you forthwith levy of the goods and chattels of the said R S, (excepting such as are by law exempt from execution) the amount of said judgment against R S with interest from the date thereof until paid. You are also commanded to levy on all the said effects of said C D in the possession or custody of said R S, or so much thereof as shall be sufficient to satisfy the said judgment against C D, the defendant, and the costs and charges incident to said levy, and make due return within sixty days from the date hereof.

....., Justice of the Peace.

Dated this..day of...., 19..

No. 94.—Notice to third person of judgment "nisi."

(Title as in No. 78.)

To R..... S.....:

Whereas judgment nisi was rendered against you by the undersigned justice in the above-entitled attachment proceedings pending before me at my office in.....township, on the..day of...., 19.., at which time and place you were required to appear by summons heretofore issued and served upon you, which summons you failed to obey; the said judgment nisi being for the sum of \$...., and \$.... costs:

You will therefore take notice that you are required to appear at my office in.....township, on the..day of...., 19.., at..o'clock a. m., (or p. m.) to answer as required in the summons heretofore issued, and to show cause why the said judgment nisi should not be made absolute. Herein fail not.

Dated this..day of...., 19..

....., Justice of the Peace.

No. 95.—Order to third person to appear for examination.

(Title as in No. 78.)

It appearing to the undersigned by the certificate of L M, constable of said county, that the said officer, with a warrant of attachment against the property of C D, the defendant in the above action, has applied to H B for the purpose of levying upon a debt owing to the defendant by said H B (or upon the property of said defendant held by said H B (or otherwise), and that the said H B refuses to furnish said officer with a certificate designating the amount and description of the property held by said H B, for the benefit of the defendant. Now, therefore, I hereby order and require the said H B to attend before me at my office on the .. day of, 19.., and be examined on oath concerning the same.

....., Justice of the Peace.

Dated this..day of...., 19..

No. 96.—Attachment to enforce above order.

(Title as in No. 78.)

State of North Carolina, to the sheriff

or other lawful officer of.....county, Greeting:

Whereas, it appears that H B was duly served on the..day of...., 19.., with an order issued by E F, one of the justices of the peace for said county, requiring said H B to attend before said justice at his office in said county on the..day of...., 19.., and be examined on oath concerning a certain debt owing to the defendant named in the above action by the said H B (or property held by the said H B for the benefit of the defendant, or otherwise, as the case may be).

And whereas, the said H B, in contempt of said order, has refused or neglected, and doth still refuse or neglect, to appear and be examined on oath, as in said order he is required to do:

Now, therefore, we command you that you forthwith attach the said H B, so as to have his body before E F, one of our justices of the peace for your county, on the..day of...., 19.., at his office in said county, then and there to answer, touching the contempt which he, as is alleged, hath committed against our authority; and further, to perform and abide by such orders as our said justice shall make in his behalf. And have you then and there this writ, with a return under your hand of your proceedings thereon. Hereof fail not at your peril.

Witness, our said justice, this..day of...., 19..

....., Justice of the Peace.

No. 97.—Execution in attachment.

North Carolina,county,township.

A..... B.....

vs.

C..... D.....

} Before....., Justice of the Peace.

State of North Carolina, to any constable

or other lawful officer ofcounty, Greeting:

Whereas, in an attachment proceeding before the undersigned, a justice of the peace for said county, on the..day of...., 19.., wherein A B

was plaintiff, and C D defendant, the following property was attached in said proceedings, being the property of the said C D. (Here give a schedule of property.)

And whereas, in said attachment proceedings a judgment was given by the undersigned in favor of the plaintiff and against the defendant for the sum of \$...., and \$.... costs:

Now, therefore, you are hereby commanded to satisfy the said judgment out of the property so attached as aforesaid, by the sale of the same, or so much thereof as shall be sufficient to satisfy the judgment; and if there is not a sufficient amount realized by said sale, then you shall satisfy said judgment out of any other goods and chattels of said judgment debtor within your county, and make due return within sixty days from the date hereof.

....., Justice of the Peace.

Done this .. day of, 19..

No. 98.—Order vacating attachment on security being given.

(Title as in No. 78.)

The defendant having appeared in this action, and applied to discharge the attachment on giving security; and the said defendant having delivered to the court an undertaking in due form of law, which has been duly approved by the court:

It is ordered that the attachment issued in this action on the..day of...., 19.., be and the same is hereby vacated and discharged, and the defendant is released therefrom in all respects. It is further ordered, that any and all proceeds of sales, and money collected by L M, constable (or sheriff), and all property attached, now in said officer's possession, be paid and delivered to said defendant or his agent and released from said attachment.

Dated this..day of.... 19..

....., Justice of the Peace.

No. 99.—Undertaking on discharge of attachment.

(Title as in No. 78.)

Whereas, the property of the above named C D has been attached, and the defendant desires a discharge of said attachment on giving security according to law:

Now, therefore, we, B B, of.....county, and D D, of.....county, undertake in the sum of \$.... (the sum named must be at least double the amount claimed by plaintiff), that if the said attachment be discharged, we will pay to the plaintiff on demand the amount of the judgment that may be recovered against the defendant in this action, not exceeding said sum of \$....

Dated this..day of...., 19..

(Signed) B B.....

D D.....

No. 100.—Acknowledgment and affidavit of sureties.

On this..day of...., 19.., before me personally appeared the above named B B and D D, known to me to be the persons described in, and who executed the above undertaking, and severally acknowledged that they executed the same.

And the said B B and D D, being severally sworn, each for himself, says that he is a resident of the state of North Carolina, and a freeholder therein, and is worth the amount of this undertaking exclusive of property exempt from execution.

B B.....

D D.....

Sworn to and subscribed the day above written before me.

....., Justice of the Peace.

No. 101.—Judgment in attachment.

Set out in the judgment that the court finds as a fact and adjudges:

1. That the notice of the action and of the issuing of the summons and warrant of attachment and the purpose of the action, stating the names of the parties, the amount of the claim, and in a brief way the nature of the demand, and requiring the defendant to appear at the time and place named and answer or demur to the plaintiff's complaint, has been duly published as the law directs.

2. That the summons and warrant of attachment issued in the action have been duly served by the said publications.

3. That the defendant is indebted to the plaintiff for (state cause of action) in the sum of \$....

4. That the plaintiff recover of the defendant the sum of \$...., with interest, etc., with costs, the costs being \$....

5. That execution be issued to the sheriff or other lawful officer commanding him that out of the goods, etc., levied on he satisfy the judgment aforesaid.

No. 102.—Magistrate's summons in claim and delivery.

North Carolina,county,township.

A..... B.....
vs. } Before, Justice of the Peace.
C..... D..... }

State of North Carolina, to any constable

or other lawful officer of.....county, Greeting:

You are hereby commanded to summon.....to appear before E F, a justice of the peace, at.....in.....township, county of....., on the..day of...., 19.., at..o'clock..m., to answer the complaint of A B, the plaintiff, in a civil action for the recovery of certain personal property of the value of \$...., described in the affidavit of said A B, which is hereto annexed, and for \$.... for the wrongful detention thereof; and for costs. Herein fail not, and of this summons make due return.

....., Justice of the Peace.

This..day of...., 19..

No. 103.—Affidavit in claim and delivery.

(Title as in No. 102.)

....., being duly sworn, says:

1st. That the plaintiff..in the above-entitled action, to-wit,....., now the owner.. [(or) by virtue of a special property in the following described property, the facts in respect to which are as follows, to-wit:.....is lawfully entitled to the possession] of the following personal property, to-wit:..... (here particularly describe the property.)

2d. That the said property is wrongfully detained by, defendant..

3rd. That the alleged cause of the detention thereof, according to this deponent's best knowledge, information and belief, is as follows: (Here state cause, if known; if unknown, so state.)

4th. That said property has not been taken for tax, assessment or fine, pursuant to a statute, or seized under an execution or attachment against the property of the plaintiff.. [(or, if so seized) that it is, by statute, exempt from such seizure.]

5th. That the actual value of said property is \$.....

6th. That said plaintiff.. ha.. commenced the above-entitled action

in this court against said defendant.. for the recovery of said property,
the summons in said action being hereto attached.

Sworn and subscribed before me, this..day of...., 19..

No. 104.—Fiat of clerk or justice.

On the back of the affidavit the clerk or justice will make the following endorsement after the undertaking set out in the next following form has been given:

"No. A. B. vs. C. D.

To the sheriff or any constable of.....county—Greeting:

For the causes stated in the within affidavit, you are required to take from, the defendant, the property within described, and deliver it to the plaintiff., Justice of the Peace."

This....day of....., 19..

No. 105.—Claim and delivery—plaintiff's undertaking.

[The foregoing fiat shall not be made until the plaintiff gives the following undertaking:]

(Title as in No. 102.)

Whereas, affidavit has been made by the plaintiff..in this action, that the defendant..therein wrongfully detain..certain personal property in said affidavit mentioned, of the value of.....dollars, and the plaintiff..claim.. the immediate delivery of said property in accordance with the statute in such case made and provided.

Now, therefore, and in consideration of the taking of said property, or any part thereof, by the sheriff or other lawful officer of said county by virtue of the said affidavit and the requisition thereon endorsed, we, the undersigned, hereby undertake and become bound to the defendant..in the sum of.....dollars, for the prosecution of this action by the said plaintiff...for the return of the property to the defendant.., with damages for its deterioration and detention, if such return is adjudged and can be had, and if for any cause return can not be had, for the payment to defendant..of such sum as may be recovered against the plaintiff.. for the value of the property at the time of the seizure, with interest thereon as damages for such seizure and detention.

..... [Seal.]

..... [Seal.]

..... [Seal.]

....., being duly sworn, each says that he is a resident and freeholder in North Carolina, and is worth.....dollars, exclusive of property exempt from execution.

Sworn and subscribed before me, this..day of...., 19..

....., Justice of the Peace.

No. 106.—Notice of exception to sureties.

(Title as in No. 102.)

To, sheriff (or constable) of county:

Take notice in the above-entitled action, that the defendant excepts to the sufficiency of the sureties offered by the plaintiff in his undertaking. And the exception is made to said sureties to the end that they

may be required to justify according to law, or that new sureties may be substituted and required to justify in like manner upon the undertaking of said plaintiff.

Dated this..day of...., 19..

....., Defendant.

No. 107.—Notice of justification of sureties.

(Title as in No. 102.)

To C D, defendant (or his attorney):

Take notice, that the sureties, in behalf of the plaintiff, in the above-entitled action, which have been excepted to by you, will justify before E F, a justice of the peace for said county, at the office of said justice in township, county, on the ... day of, 19.., at o'clock, .. m., (or if new sureties are offered, state who they are, and what their occupation and residence are, and that they will justify at a time and place to be named. The said justification shall be as prescribed in sec. 1250).

Dated this..day of...., 19..

....., Sheriff, (or A B, Plaintiff).

No. 108.—Claim and delivery—officer's return.

Received on this..day of...., 19.., and executed the..day of...., 19.., by reading the within summons to....., the defendant, and delivering to him a copy of the same, and also by delivering to him a copy of the annexed affidavit and undertaking and the order thereon endorsed, and by taking from the defendant the following personal property, described in the annexed affidavit: And after holding the said property for three days, no defendant's undertaking being filed with me, I delivered the said property to the plaintiff on his undertaking; [(or,) the defendant having executed a good and sufficient undertaking as required by law, the said property was delivered back to the defendant.]

This..day of...., 19..

.....
.....

No. 109.—Claim and delivery—defendant's undertaking.

(Title as in No. 102.)

Whereas, the plaintiff..has claimed and the.....of.....county has taken from the defendant..the following property, viz:

Now, therefore, we....., undertake and become bound to the plaintiff.. in the sum of.....dollars, that if the said property be returned to the defendant..it shall be delivered to the plaintiff.., with damages for its deterioration and detention, if such delivery be adjudged and can be had, and if delivery can not for any cause be had, that the plaintiff.. shall be paid such sum as may be recovered against the defendant.. for the value of the property at the time of the wrongful taking or detention, with interest thereon as damages for such taking and detention.

This..day of...., 19..

..... (Seal.)
..... (Seal.)

....., being sworn, each says that he is a resident and freeholder in North Carolina, and is worth....dollars, exclusive of property exempt from execution.

.....
.....

Sworn and subscribed before me, this..day of...., 19..

....., Clerk Superior Court.

No. 110.—Affidavit to interplead.

(Title as in No. 102.)

R S, being duly sworn, says that in the above-entitled action, now pending before E F, a justice of the peace of said county, the property in dispute, to-wit, one gray mule, ten years old, named "Jack," is the property of this affiant, and not the property of the said A B or C D, the plaintiff or defendant in said action; that the said mule was mortgaged to this affiant on the ..day of...., 19.., by the said C D, to secure the payment of a note for \$.., for the purchase-money of said mule, which note and mortgage the said C D has failed to satisfy, and the same are still due and unpaid; that the mortgage, under which this affiant claims, was duly executed and registered in the register's office of..... county prior to that under which the said A B claims the said mule; all of which this affiant is ready to prove, and he is also ready to give to the sheriff the undertaking required by statute, to the end that the said mule may be placed in his possession. And the affiant prays that the right and title to said mule may be declared by the court to be in him, as of right it ought to be, and that he be put in possession of the same.

R S, Affiant.

Sworn to and subscribed before me, this..day of...., 19..

E F, Justice of the Peace.

No. 111.—Property claimed by third person—undertaking.

(Title as in No. 102.)

Whereas, the above-entitled action having been commenced before E F, a justice of the peace of county, by A B against C D for the possession of certain personal property described in the affidavit of the said A B, of the value of \$....; and whereas, R S has filed his affidavit before the said justice, claiming that the ownership of said personal property is in himself and not in the said A B or the said C D:

Now, therefore, in consideration of the affidavit of the said R S, we, the undersigned,of.....county, and.....of.....county, do hereby undertake and become bound to the said A B and to the said C D, or any other person who may prove title to said property in the sum of \$...., for the prosecution of the claim of the said R S, for the possession of the said personal property before E F, the aforesaid justice of the peace, and, if the said personal property or any part thereof shall be placed in the possession of the said R S, by reason of his affidavit and undertaking, for the delivery of the same to the person entitled thereto, if a return shall be adjudged, and for the payment of all such costs and damages as may be awarded against him.

Signed and delivered in the presence of

[Justification as in No. 109.]

No. 112.—Summons for relief to term.

NORTH CAROLINA,County.—In the Superior Court.

A.....	B.....	} Summons for relief.
	vs.	
C.....	D.....	

State of North Carolina, to the sheriff of.....county—Greeting:

You are hereby commanded to summon....., the defendant..above named, if to be found within your county, to be and appear before the judge of our superior court, at a court to be held for the county of

....., at the court-house in....., on the..Monday after the.... Monday of....., the same being the..day of...., 19.., and answer the complaint of the plaintiff which will be deposited in the office of the clerk of the superior court of said county within the first three days of said term, and let the defendant..take notice that if....shall fail to answer the complaint within the time required by law, the plaintiff will apply to the court for the relief demanded in the complaint. Herein fail not, and of this summons make due return.

Given under my hand, this..day of...., 19..

....., Clerk Superior Court.....County.

No. 113.—Bond for costs.

(Title as in No. 112.)

We acknowledge ourselves bound unto....., the defendant in this action, in the sum of two hundred dollars, to be void, however, if the plaintiff shall pay the defendant all such cost as the defendant may recover of the plaintiff in this action.

Witness our hands and seals, this..day of...., A D. 19..

..... [Seal.]
..... [Seal.]
..... [Seal.]

No. 114.—Suit by pauper—certificate, affidavit and order.

NORTH CAROLINA,county.—In the Superior Court.

A..... B..... }
vs. } Application to sue as a pauper.
C..... D..... }

To the honorable clerk (or judge) of the superior court of county:

This is to certify that I have examined the case of the plaintiff in the above-entitled action, and believe that he has a good and meritorious cause of action in fact and law., Attorney.

NORTH CAROLINA, county.

.....being duly sworn, says: That he is unable to give sureties, or make the deposit required by law, to enable him to prosecute the above action against the defendant....., and therefore prays that he may be allowed to sue in said action as a pauper.

Sworn before me this..day of...., 19..

NORTH CAROLINA,county.—In the superior court.

A..... B..... }
vs. } Order granting leave to sue as a pauper.
C..... D..... }

In the above-entitled action, upon the certificate and affidavit above set forth, it is ordered:

1st. That the above-named.....be allowed to prosecute.....said suit as a pauper.

2d. Thatbe assigned to....as counsel to prosecute said action.

This..day of...., 19..

No. 115.—Service by publication—affidavit.

NORTH CAROLINA,county.—In the superior court.

A..... B..... }
vs. } Affidavit.
C..... D..... }

A B, being duly sworn, deposes and says: That in the above-entitled action now pending in the superior court of.....county, the sheriff

of said county has returned the summons issued to him in said action endorsed "C D is not to be found in.....county:—" that the defendant therein can not after due diligence be found within the state; that a cause of action exists against the defendant in favor of the plaintiff as follows: (here state the cause of action briefly, conforming to the requirements of section 932) (or that the said action relates to real estate situate in the aforesaid county and state and the defendant is a proper party thereto); and that (here state any cause of action mentioned in section 932). Wherefore the said plaintiff prays that an order may be made by the court that service of summons be made on said defendant by publication in some newspaper published in..... county, N C.

A B, Affiant.

Dated this..day of...., 19..

Subscribed and sworn to before me this..day of...., 19..

....., Clerk of the Superior Court.

No. 116.—Order of publication.

(Title as in No. 115.)

It appearing from the affidavit of A B in this action, that C D, the defendant therein, is not to be found in.....county, and can not after due diligence be found in the state, and it further appearing (state any cause of action etc., mentioned in the affidavit):

It is therefore ordered, that notice of this action be published once a week for four weeks in....., a newspaper published in.....county, setting forth the title of the action, the purpose of the same, and requiring the defendant to appear at the term of the superior court of..... county, to be held on the Monday in, 19.., at the court-house in said county, and answer or demur to the complaint of the plaintiff.

....., Clerk of the Superior Court.

This ..day of...., 19..

(See sections of Manual, 932 to 936.)

No. 117.—Service by publication—notice.

NORTH CAROLINA,county.—In the superior court.

A..... B.....
vs.
C..... D..... } Notice.

The defendant above named will take notice that an action entitled as above has been commenced in the superior court of.....county to (here state briefly the purpose of the action); and the said defendant will further take notice that he is required to appear at the term of the superior court of said county to be held on the..Monday in...., 19.., at the court-house of said county in....., N. C., and answer or demur to the complaint in said action, or the plaintiff will apply to the court for the relief demanded in said complaint.

....., Clerk of the Superior Court.

This..day of...., 19..

No. 118.—Affidavit of printer.

NORTH CAROLINA,county..

A B, foreman (or publisher, or principal clerk) of the....., a newspaper published in.....county, and state aforesaid, being duly sworn, says: That the annexed advertisement of notice, in the action entitled A B vs. C D, was duly published in the aforesaid newspaper once a week for four weeks, beginning with the issue dated the..day of...., 19..

....., Foreman.

Sworn to and subscribed before me, this..day of...., 19..

....., Justice of the Peace.

No. 119.—Summons for relief before the clerk.

NORTH CAROLINA,county.—In the superior court.

A.....	B.....	} Summons for relief—before the clerk.
vs.		
C.....	D.....	

State of North Carolina, to the sheriff of.....county—Greeting:

You are commanded to summon C D, the defendant above named, if to be found within your county, to appear at the office of the clerk of superior court for the county of.....on the..day of...., 19.., and answer the complaint or petition of the plaintiff, which will be deposited in the office of the clerk of the superior court of said county within ten days from the date of this summons; and let the defendant take notice, that if he fail to answer the said complaint at that time, the plaintiff will apply to the court for the relief demanded in the complaint. Herein fail not, and of this summons make due return.

Given under my hand, this..day of...., 19..
, Clerk of the Superior Court.

No. 120.—Judgment—transcript of.

NORTH CAROLINA,county.—In the superior court.

.....	} Transcript of judgment.
.....	
vs.	
.....	
.....	

At a superior court, held for the county of....., at the court-house in....., the..day of...., 19.., before his Honor, Judge....., judgment was rendered in favor of....., the above-named plaintiff., against....., the defendant., for the sum of \$.....dollars, with interest on....dollars from the..day of...., 19.., till paid, and cost of suit, \$....

I,, clerk of the superior court of said county, do hereby certify that the foregoing is a true and perfect transcript from the judgment docket in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in.....the..day of...., 19..

[L. S.], Clerk Superior Court. .

No. 121.—Notice to defendant to revive judgment.

NORTH CAROLINA,county.—In the superior court.

A.....	B.....	} Notice to defendant.
vs.		
C.....	D.....	

State of North Carolina, to the sheriff of.....county—Greeting:

Whereas, in the above-entitled cause judgment was rendered in favor of the plaintiff and against the defendant, on the..day of....., 19.., for the sum of \$.... and for cost, \$...., which judgment was docketed on the judgment docket of said court on the..day of....., 19.., which judgment stands upon said docket unsatisfied; and....., the plaintiff, having made oath that said judgment has not been satisfied in full:

You are therefore commanded to make known to the defendant that he is directed to appear before the clerk of this court at his office in on the ..day of...., 19.., and show cause, if any he has, why execution should not issue on said judgment for the amount still unpaid, and have you then and there this notice.

Witness,, clerk of said court at office in....., this the.... day of....., 19..
, Clerk Superior Court.

No. 122.—Order reviving judgment.

(Title as in No. 121.)

It appearing from the return of the sheriff of.....county, upon the notice issued in the above-entitled action, that the defendant therein was duly notified to appear at the office of the undersigned on the.... day of...., 19.., and show cause, if any he had, why execution should not issue on the judgment described in said notice; and it further appearing to the satisfaction of the court that said judgment has not been satisfied, and the said defendant having failed to appear, as summoned to do, and show cause why execution should not issue (or having appeared and failed to show cause, etc.): It is therefore ordered and adjudged that said judgment be and the same is hereby revived, to the end that execution may be issued.

This..day of...., 19..

....., Clerk Superior Court.

No. 123.—Execution against property.

North Carolina, county—In the superior court.

A.....	B.....	} Execution.
	vs.	
C.....	D.....	

State of North Carolina, to the sheriff of.....county—Greeting:

Whereas, judgment was rendered on the..day of....., 19.., in the superior court of.....county, in an action between....., plaintiff, and....., defendant, in favor of the said..... and against the said.... for the sum of \$...., as appears to us by the judgment-roll filed in the office of the clerk of the superior court of said county; and whereas, the judgment was docketed in this county on the..day of...., 19.., and the sum of \$.... is due thereon, with interest on \$.... from the..day of...., 19..; and the further sum of \$.... for costs and disbursements in said suit expended, for which the saidis liable:

You are therefore commanded to satisfy the said judgment out of the personal property of the said defendant within your county; or, if sufficient personal property can not be found, then out of the real property in your county belonging to such defendant on the day when said judgment was so docketed in your county, or at any time thereafter, in whose hands soever the same may be; and have you this execution, together with the money, before our said court, at the court-house in.... on the..Monday after the..Monday in..next, and there to render the same to the said plaintiff.

Issued the..day of...., 19..

....., Clerk Superior Court.....County.

Note.—Clerks must issue execution on all judgments rendered in their respective courts within six weeks after rendition, unless otherwise directed by the plaintiffs therein. See sec. 1075.—Ed.

No. 124.—Venditioni exponas.

State of North Carolina, to the sheriff ofcounty—Greeting:

You are hereby commanded to expose to sale to the highest bidder, for ready money,which.....levied on by you on the..day of....., 19.., by virtue of an execution, at the instance of.....to satisfy the sum of \$...., of which \$.... is principal, bearing interest from the..day of...., 19.., which the said.....recovered against..... for debt, besides the further sum of \$...., for costs in said suit expended.

And you are also further commanded, that of the other goods and chattels, lands and tenements of, if to be found in your county, you cause to be made a sum sufficient to satisfy such part of the above

execution as may remain unpaid by the sale of the property above mentioned; besides the further sum of \$.... for costs and charges incurred by plaintiff since the rendition of said judgment; and return the said moneys before our said court, at the court-house in....., on the.... Monday after the.....Monday in....., 19..

Issued the..day of...., 19..

....., Clerk Superior Court.....County.

No. 125.—Execution for costs—civil.

(Title as in No. 123.)

State of North Carolina, to the sheriff of.....county—Greeting:

Whereas, judgment was rendered on the..day of....., 19.., in the superior court of.....county, in an action between....., plaintiff, and....., defendant, in favor of the said.....against the said..... for the sum ofdollars as appears to us by the judgment-roll filed in the office of the clerk of the superior court of said county; and whereas, the judgment was docketed in this county on the....day of, 19.., and the sum of...dollars is due thereon for costs and disbursements in said suit expended, for which the said.....is liable:

You are therefore commanded to satisfy the said judgment out of the personal property of the said defendant within your county; or, if sufficient personal property can not be found, then out of the real property in your county belonging to such defendant on the day when the said judgment was so docketed, in your county, or any time thereafter, in whose hands soever the same may be; and have you this execution, together with the money, before our said court, at the court-house in, on the....Monday after the....Monday in.....next, and there to render the same to the said plaintiff.

Issued the..day of...., 19..

....., Clerk Superior Court.....County.

No. 126.—Execution for specific or personal property.

(Title as in No. 123.)

State of North Carolina, to the sheriff of.....county—Greeting:

Whereas, judgment was rendered on the..day of...., 19.., in the superior court of.....county in an action between....., plaintiff, and....., defendant, in favor of said plaintiff, for the delivery to him of the possession of the following described property, to-wit: (here describe property); or if a delivery thereof can not be had, then for...dollars, the value thereof, duly assessed, and also for...dollars, for, as appears by the judgment roll filed in the office of the clerk of the superior court of said county. And whereas, the said judgment was docketed in this county on the..day of...., 19.., and the sum ofdollars is now due thereon, anddollars additional, with interest as aforesaid, in case the property is not delivered:

You are therefore commanded to deliver the said property to the said, plaintiff, and to satisfy the sum of dollars for, with interest as aforesaid, and also, in case a delivery of the personal property can not be had, the further sum of...dollars, with interest as aforesaid, out of the personal property of the said defendant within your county; or, if such personal property can not be found, then out of the real property in your county belonging to such defendant on the day when said judgment was docketed therein, or at any time thereafter, in whose hands soever the same may be; and return this execution before our said court, at the court-house in...., on the....Monday after the....Monday in...., next.

Issued the..day of....., 19..

....., Clerk Superior Court.....County.

No. 127.—Execution against the person.

(Title as in No. 123.)

The State of North Carolina, to the sheriff of.....county—Greeting:

Whereas, judgment was rendered in the superior court of.....county on the..day of....., 190.., in an action between....., plaintiff, and, defendant, in favor of said plaintiff, and against the said defendant, for the sum of \$...., as appears by the judgment-roll filed in the office of the clerk of said court; and whereas, the said judgment was docketed in this county on the..day of....., 19.., and the sum of \$.... is now due thereon, with interest on \$.... from the....day of, 19..; and whereas, an execution against the property of the saidhas been duly issued to you and returned unsatisfied:

You are therefore commanded to arrest the said.....and commit him to the jail of your county until he shall pay the said judgment, or be discharged according to law; and return this execution before our said court at the court-house in....., on....Monday after the....Monday in.....next.

Issued the ... day of, 19...

....., Clerk Superior Court.....County.

No. 128.—Notice of sale under execution.

North Carolina,county.—In the superior court.

A..... B.....	}	Notice of execution of sale.
vs.		
C..... D.....		

By virtue of an execution directed to the undersigned from the superior court of.....county in the above-entitled action, I will, on Monday, the..day of....., 19.., at..o'clock..m. at the court-house door of said county, sell to the highest bidder for cash to satisfy said execution, all the right, title and interest which the said C D, the defendant, has in the following described real estate, to-wit: (Here describe real estate).

This ... day of, 19...

....., Sheriff.

Note.—A copy of the notice of sale shall also be served on the defendant personally, in case real property is sold, at least ten days before the day of sale, if said defendant is found in the county. (See sec. 1099.) Where there is no sale for want of bidders, the officer shall state in his return on the execution where property was advertised and offered for sale. Sec. 1107.—Ed.

No. 129.—Officer's forthcoming bond.

North Carolina,county.

Know all men by these presents, that we, A B, C D, and E F, are held and firmly bound unto....., sheriff of.....county, in the sum of \$...., for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this..day of...., 19..

The condition of the above obligation is such, that whereas the said G H, sheriff as aforesaid, hath this day levied an execution in favor of L M, against the above bounden A B upon the following personal property of said A B, to-wit: (here describe property) and hath permitted said property to remain in the possession of said A B: Now, therefore, if the said A B, on the..day of....., 19.., the day of sale appointed for the same, or upon any other day to be hereafter named by said G H, sheriff, shall well and truly deliver to said G H, sheriff, all the said personal property to answer said execution, then the above obligation to be void, otherwise to remain in full force and virtue.

..... (Seal.)

..... (Seal.)

..... (Seal.)

Teste:.....

No. 130.—Sheriff's deed on sale under execution.

State of North Carolina, county of.....

This indenture, made the...day of....., 19.., between....., sheriff of.....county, North Carolina, of the first part, and.....of of the second part, Witnesseth: That whereas, a certain writ of execution issued out of the superior court of.....county in favor of.....plaintiff, and against.....defendant, to the said sheriff was directed and delivered, commanding him out of the personal property of the said.....within said county found, to satisfy the same, or in default thereof, out of the real property of said judgment debtor in said county situate, to cause the same to be made, as by reference to said execution will more fully appear; and whereas, because sufficient personal property of said judgment debtor to satisfy said execution in said county could not be found, he, the said sheriff, did levy on, take and seize all the estate, right, title and interest of the said judgment debtor of, in and to the real estate hereinafter particularly described, with the appurtenances, and did, on the...day of...., 19.., sell the said premises at public auction, at the court-house door in....., in said county, after having first given the notice of the time and place of such sale and advertised the same according to law, at which sale the saidbecame the last and highest bidder therefor, at and for the price of \$.....:

Now, therefore, know all men by these presents: That the said party of the first part, sheriff as aforesaid, by virtue of said execution and for and in consideration of the sum of money above mentioned, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, sold, conveyed and confirmed, and by these presents does grant, sell, convey and confirm unto the said party of the second part,heirs or assigns, all the estate, right, title and interest of the said..... judgment debtor aforesaid, whereofseized or possessed on the day of docketing of said judgment in said county, or at any time afterward, of, in and to the following described real estate, to-wit: together with all and singular the tenements and appurtenances thereunto belonging or in anywise appertaining.

To have and to hold the said described premises, with the appurtenances, unto the said party of the second part,heirs and assigns forever, as fully and absolutely as he, the said sheriff, party of the first part aforesaid, can, may or ought to, by virtue of the said execution, and of his said office of sheriff, grant, sell, convey and confirm the same.

In witness whereof, the said party of the first part, sheriff as aforesaid, hath hereunto set his hand and seal, the day and year first above written.

..... (Seal.)

Sheriff of County, North Carolina.

In presence of.....

State of North Carolina—County of.....

Be it remembered, that on this...day of....., 19.., before me, the undersigned,in and for said county, personally came....., sheriff of.....county, North Carolina, to me well known to be the same person described in and who executed the foregoing deed, and acknowledged that he executed the same for the purposes therein mentioned. (Let the same, with this certificate, be registered.)

Witness my hand (and official seal) this...day of...., 19..

....., Clerk of the Superior Court.

No. 131.—Affidavit to examine judgment debtor or third person.

North Carolina,county—In the superior court.

A..... B..... }
 vs. }
 C..... D..... }

Affidavit,

State of North Carolina—County of.....

....., being duly sworn, says:

1. That judgment was duly recovered in favor of....., plaintiff, ofcounty, state of....., against....., defendant, of.....county, state of....., on the..day of...., 19..; (in the superior court of or) in a justice's court of the county of.....and state afore-said, for \$....., and \$....cost.

2. That a transcript of said judgment (the judgment-roll in said action) was duly filed in the office of the clerk of the superior court of said.....county on the..day of...., 19.., and said judgment duly docketed therein against said defendant....

3. That an execution against the property of the said defendant.... was on the..day of...., 19.., duly issued upon said judgment and delivered to the sheriff of.....county, where the said.....then resided and yet resides.

4. That the said sheriff has duly returned said execution to the said superior court.... unsatisfied...., and that the said judgment remainsunpaid and unsatisfied except that the sum of \$....is paid thereon.

5. That the defendant has no known property that is liable to execution, but, as affiant is informed, and believes, said defendant has property, choses in action, and other things of value not exempt from execution in which he unjustly refuses to apply towards the satisfaction of said judgment.

6. That, as affiant is informed, and believes,, who resides at, has property of the said.....which exceeds in amount and value \$10, and consists of..... That, as affiant is informed, and believes,is indebted to..... in an amount exceeding \$10.

7. Subscribed and sworn before me, this..day of...., 19..

....., Clerk Superior Court.

Note.—(1) Paragraph IV may be omitted when the supplementary proceedings are had before return of execution. (2) Paragraph VI is to be inserted only when there is a desire to examine the third persons named therein as being indebted to defendant. (3) See the following cases: 81—65; 98—545; 99—110; 109—105.

No. 132.—Order for examination of judgment debtor or third person.

North Carolina,county—In the superior court.

A..... B..... }
 vs. }
 C..... D..... }

Order for examination of judgment debtor or

Third person.

It appearing to my satisfaction, by the annexed affidavit of..... that judgment has been recovered in this action in the superior court ofcounty (or in a justice's court of.....county), in favor of the above-named plaintiff and against the above-named defendant, and that said judgment has been duly docketed in this court; that an execution against the property of the said....., judgment debtor in this action, has been duly issued to the sheriff of the proper county, upon the judgment herein (and returned unsatisfied, and that the said defendant has property which ought to be subjected to the payment of this judgment, and that the said defendant has no known property liable to execution, but has property not exempt from execution which.... unjustly refuses to apply in satisfaction of said judgment; that said judgment remains....unpaid (except that the sum of.....dollars is

paid thereon); and it further appearing that.....has property of (or is indebted to).....judgment debtor in an amount exceeding ten dollars:

I do hereby order and require the said defendant.....to appear before, who is hereby appointed a referee for that purpose, aton the..day of...., 19.., at..o'clock..m., and on such further days as the court or referee duly appointed shall name, to be examined and answer concerning the same. And the said.....and the said.... hereby severally forbidden to pay, receive, transfer, dispose of, or in any way interfere with the property of said.....not exempt from execution, or any debt due to....., until further order in the premises.

Witness my hand (and official seal) this..day of...., 19..

....., Clerk of the Superior Court of.....County.

Note.—On the back of the order the sheriff will make his return as follows: "A B vs. C D—Supplementary Proceedings.—Received day of, 19... Executed by delivering a copy of the within order and affidavit to C D, on the day of, 19...; also on day of, 19.., the said papers were served in same manner on L M., Sheriff.

No. 133.—Homestead and personal property exemption.

North Carolina,county.

A..... B..... }
vs. }
C..... D..... }

I,, sheriff of.....county aforesaid, have this day summoned as appraisers to lay off and assign to the said his homestead and personal property exemption. Each of said appraisers is a discreet person and qualified to act as a juror in said.....county.

This..day of...., 19..

....., Sheriff.

No. 134.—Appraiser's return.

The undersigned having been duly summoned and sworn to act as appraisers of the homestead and personal property exemption of....., of.....township,county, by....., sheriff of said county, in the case of, do hereby make the following return:

We have viewed and appraised the homestead of the said....., and the dwellings and buildings thereon, owned and occupied by saidas a homestead, and valued the same at \$...., and the tract, bounded as follows:, is valued at \$....., and is exempt from sale under execution, according to law.

At the same time and place we viewed and appraised, at the values annexed, the following articles of personal property selected by said, to-wit: (here describe personal property and give its value), which we declare to be a fair valuation, and the said articles are exempt from sale under said execution.

We hereby certify that we are not related by blood or marriage to the judgment debtor or the judgment creditor in the above-entitled action, and have no interest, near or remote, in the above exemptions.

Given under our hands and seals, this ... day of, 19...

..... (Seal.)
..... (Seal.)
..... (Seal.)

The above return was made and subscribed in my presence, the.... day of....., 19..

....., Sheriff of.....County.

Note.—The sheriff shall endorse on the back of the foregoing the following: "Homestead returns. A B vs. C D.—The within named E F, G H and I J were summoned, sworn and qualified according to law as the appraisers of the homestead and personal property exemption of the said C D, under an execution in favor of A B, on this day of, 19... .., Sheriff of County."

No. 135.—Petition for homestead.

In the matter of
 A..... B..... } Before....., Justice of the Peace.
 Petition for homestead. }County.

A B respectfully shows that he is entitled to a homestead exempt from execution in certain real estate in said county, bounded and described as follows: (here describe property); the true value of which he believes to be \$1,000, including the dwellings and buildings thereon.

A B further shows, that he is entitled to a personal property exemption from execution to the value of \$500 to be selected from the following property: (here describe property).

A B therefore prays your worship to appoint as assessors three disinterested persons qualified to act as jurors, to view the premises and lay off, allot and set apart to your petitioner his homestead and personal property exemptions and report according to law.

Dated..day of...., 19..

A B, Petitioner.

No. 136.—Magistrate's order.

North Carolina,county.—Before....., Justice of the Peace.

Whereas,has petitioned for a homestead and personal property exemption, in accordance with article X of the constitution of North Carolina:

I do hereby appoint G H, I J and K L, three disinterested persons, qualified to act as jurors and residing incounty, as assessors, to view the said premises and lay off, allot and set apart to the said petitioner his homestead and personal property exemption according to said applicant's direction and as provided by law, and said assessors shall make and sign a descriptive account of the same and return it to the office of the register of deeds of said county.

....., Justice of the Peace.
 Dated this..day of...., 19..

No. 137.—Appraiser's return.

The undersigned, having been duly summoned and sworn to act as appraisers of the homestead and personal property exemption of A B, of.....township,county, by....., sheriff (or constable) of said county, do hereby make the following returns:

We have viewed and appraised the homestead of the said A B, and the dwellings and buildings thereon, owned and occupied by said A B as a homestead, and valued the same at \$...., and the tract bounded as follows:is valued at \$.... and is exempt from sale under execution, according to law.

At the same time and place we viewed and appraised, at the values annexed, the following articles of personal property, selected by said C D, to-wit: (here describe personal property and give its value), which we declare to be a fair valuation, and the said articles are exempt from sale under said execution.

We hereby certify that we are not related, by blood or marriage, to the judgment debtor or the judgment creditor in the above-entitled action, and have no interest, near or remote, in the above exemptions.

Given under our hands and seals, this..day of....., 19..

..... (Seal.)

..... (Seal.)

..... (Seal.)

The above return was made and subscribed in my presence, the ..day of....., 19..

....., Sheriff of.....County.

Note.—Sheriff's return similar to that in No. 134.—Ed.

No. 138.—Laying off homestead—notice to creditors.

North Carolina,county,township.

In the matter of the homestead of A B.—Notice to creditors.

A B, of said county and state, having filed his petition before the undersigned for his homestead and personal property exemption, this is to notify all the creditors of the said A B that the said petition will be heard at my office in.....township,county, on the..day of, 19.., when and where, if they shall appear, they may be heard.

Dated this..day of...., 19.. Justice of the Peace.

No. 139.—Notice to sheriff when judgment creditor dissatisfied.

North Carolina,county.

A..... B..... }
vs. } Notice.
C..... D..... }

To.....:

Take notice, that the undersigned creditor of C D, the defendant above, is dissatisfied with and excepts to the valuation and allotment of the appraisers of the homestead and personal property exemption of the said C D, made by virtue of an execution in the above-entitled action, which was allowed by G H, I J and K L, appraisers, which exception will be filed with the clerk of the superior court of.....county.

Dated this..day of, 19.. L M, Creditor.

No. 140.—Exception of creditor to appraisers' return.

North Carolina,county—In the superior court.

A..... B..... }
vs. } Exceptions to return.
C..... D..... }

L M, of the aforesaid county and state, excepts to the return of the appraisers G H, I J and K L, who valued and allotted the homestead and personal property exemption of C D, and who were summoned by the sheriff of.....county to value and allot the said homestead and personal property exemption of the said C D, by virtue of an execution issued in the above entitled action, a transcript of which return is hereto annexed; the said exception being taken to said return for the following reasons:

1. For that the homestead as set forth and described in the return of said appraisers is valued at too small a valuation.

2. For that the horse mentioned in the articles of personal property selected by the said C D as his personal property exemption, is appraised by said appraisers at too small a sum, to-wit, fifty dollars.

3. For that, etc. (here state other exceptions.)

Wherefore the undersigned prays that the foregoing exceptions and the return of the aforesaid appraisers may be placed upon the civil issue docket of the superior court of said county for trial at the next term thereof as other civil actions.

Dated this..day of...., 19.. L M, Creditor.

Note.—The above exceptions shall be appended to a transcript of the return of the appraisers as in Nos. 134 and 137.—Ed.

No. 141.—Undertaking of objector in homestead allotment.

North Carolina, county—In the superior court.

A..... B..... }
 vs. } Undertaking on appeal.
 C..... D..... }

Whereas, G H, I J, K L, assessors, did allot and appraise the homestead and personal property exemption of C D, the defendant in the above-entitled action on the .. day of .., 19..; and whereas, the said allotment and appraisal was excepted to by L M, creditor of C D:

Now, therefore, we,, of county, and, of county, and, of county, undertake pursuant to statute, that the said L M shall pay to the adverse party all costs that may be adjudged against him, not exceeding one hundred dollars.

This .. day of, 19...

..... (Seal)

..... (Seal)

..... (Seal)

Witness:

..... county.

..... and and, above named, being duly and severally sworn, each for himself says that he is a resident and freeholder in the state of North Carolina, and is worth double the sum specified in the above undertaking, over and above all his debts and liabilities and exclusive of property exempt from execution.

Sworn and subscribed before me,

this .. day of, 19...

.....

.....

.....

Clerk Superior Court.

No. 142.—Appeal bond—for costs.

North Carolina, county—In the superior court.

..... }
 vs. } Appeal bond for costs.
 }

Whereas, on the .. day of, 19.., recovered judgment against in the superior court of said county in the sum of \$....., and for costs of suit;

And whereas, the appellant intends to appeal from said judgment to the supreme court:

Now, therefore, we,, of the county of, and, of, and, of, undertake, pursuant to the statute, that the said appellant will pay all costs which may be awarded against said appellant on such appeal, not exceeding \$250.

This ... day of, 19...

..... (Seal)

..... (Seal)

Witness:

..... (Seal)

..... and and, above named, being duly and severally sworn, say, each for himself, that he is a resident and freeholder in the state of North Carolina, and worth double the sum specified in the above undertaking, over and above all his debts and liabilities and exclusive of property exempt from execution.

Sworn and subscribed before me, this

... day of, 19...

....., Clerk Superior Court.

.....

.....

.....

No. 143.—Supersedeas bond—money judgment.

North Carolina, county—In the superior court,

..... }
vs. }

Whereas, on the ... day of, 19..., the above-named plaintiff recovered judgment against the defendant in the superior court of said county for the sum of \$...., and for cost of suit:

And whereas, the appellant intends to appeal from the said judgment to the supreme court:

Now, therefore, we, and and, of the county of, and state of North Carolina, undertake, pursuant to the statute, that the said appellant shall pay all costs which may be awarded against him on such appeal, not exceeding \$250; and we do also undertake, pursuant to the statute, that if said judgment, or any part thereof, be affirmed, or the appeal be dismissed, the said appellant will pay the amount directed to be paid by the judgment, or the part of such amount as to which the judgment shall be affirmed, if it be affirmed only in part, and all damages which shall be awarded against the appellant upon said appeal.

..... (Seal)
..... (Seal)
..... (Seal)

Witness:

..... and and, above named, being duly and severally sworn, say, each for himself, that he is a resident and freeholder in the state of North Carolina, and worth double the sum specified in the above undertaking, over and above all his debts and liabilities and exclusive of property exempt from execution.

Sworn and subscribed before me, this
... day of, 19... ..
....., Clerk Superior Court.

No. 144.—Judgment—confession of.

North Carolina, county—In the superior court.

..... }
vs. } Before the clerk.
..... }

I., the defendant.. in the above-entitled case, hereby confess judgment in favor of, plaintiff., for dollars, and authorize the entry of judgment therefor against on the ... day of, 19...

II. The confession of judgment is for a debt now justly due from to the said plaintiff., arising from the following facts: (here state facts out of which the debt arose), which said sum is due to said plaintiff.. over and above all just demands that ha.. against

.....
.....

....., being duly sworn, says that the facts stated in the above confession are true, and that the amount of the judgment confessed is justly due the plaintiff..

Sworn to and subscribed before me, this
the ... day of, 19... ..
....., Clerk Superior Court.

No. 145.—Petition to adopt minor.

North Carolina, county—In the superior court.

A..... B.....
 vs
 C..... D..... } Petition for adoption.

To, clerk of the superior court of county:

The petition of A B, of said county and state, respectfully sheweth:

I. That is an orphan child of the age of years, and is at present residing with C D, of county.

II. That the parents of said orphan child are dead, their names being and, formerly of said county and state; and that said child has no guardian.

III. That the said orphan has no estate of any kind, either real, personal or mixed, and is entirely dependent upon C D, with whom the said orphan now resides.

IV. That the petitioner desires to adopt the said orphan for life, to which adoption C D, with whom said orphan now resides, consents.

Wherefore, the petitioner prays that he may be allowed to adopt the said orphan child for the life of said child, and that letters of adoption may be granted him by the court., Petitioner.

This ... day of, 19...

Note.—The above form may be changed, of course, to conform to any of the provisions of the section under which it is drawn.—Ed.

No. 146.—Order granting letters of adoption.

(Title as in No. 145.)

This cause coming on to be heard upon the allegations of the petition, and being heard, and it appearing to the court that is an orphan, without any estate, and it appearing that the parents (or either of them, as the case may be) of said orphan child are dead, and that A B, of said county and state, who is a proper and suitable person to have custody of said orphan, desires to adopt said orphan child for life, and that C D, with whom said child resides, consents thereto: It is therefore ordered and adjudged by the court that letters of adoption be and the same are hereby granted to the said A B, to the end that the relations of parent and child be established for life between the said A B and the said, an orphan child, with all the duties, powers and rights belonging to the relationship of parent and child.

....., Clerk Superior Court.

Dated this ... day of, 19...

No. 147.—Letters of adoption.

North Carolina, county—In the superior court.

State of North Carolina, to all to whom

these presents shall come—Greeting:

A B having applied by petition to the undersigned, clerk of the superior court of county, for the adoption of, an orphan child for life; and the said A B having satisfied the undersigned that he is a suitable person to have charge of said orphan; and an order of court having been made granting the petition of the said A B:

These are therefore to authorize and empower the said A B to take charge of the said, an orphan, and enter upon his duties as parent of said orphan for life, to the end that the relationship of parent and child may be fully established between said A B and said, an orphan, agreeably to an order made by the court.

Witness my hand and official seal, this, 19...

(L. S.)

....., Clerk Superior Court.

No. 148.—Form of indenture for apprentice, clerk and employer.

North Carolina, county.

In the superior court—before the clerk.

This indenture, made this ... day of, 19..., between, clerk of the superior court of the county of, and state of North Carolina, and his successors in office, of the one part, and of the other part, witnesseth: That the said, clerk of the superior court, in pursuance of the statute in such cases made and provided, doth put, place and apprentice, a minor (being of the age of .. years, .. months, .. days, at the execution of this indenture), unto the said, as his employer, until the said, apprentice, shall attain the age of years, during all which time the said apprentice his employer shall faithfully and honestly serve and his lawful commands readily obey. The said, apprentice, shall not at any time absent himself from his said employer's service, but in all things, as a good and faithful apprentice shall behave towards his said employer during the period of his apprenticeship. And the said.....employer doth covenant, promise and agree to and with the said.....clerk of the superior court, that he will, during the term of his apprenticeship, teach or cause to be carefully and skilfully taught to said apprentice every branch of the business of....., and that he will constantly provide for said apprentice during the term aforesaid sufficient diet, clothes, medical attention, lodging and accommodations fit and necessary in sickness and in health; and that he will teach or cause to be taught the said apprentice to read and write and the rules of arithmetic to the double rule of three.

The said.....employer further agrees to pay the said apprentice for his services during the continuance of the said apprenticeship, as follows:

For the first year, ending on the...day of...., 19..., \$....; for the second year, ending on the...day of...., 19..., \$....; for the third year, ending on the...day of...., 19..., \$.....; for the fourth year ending on the...day of...., 19..., \$....; for the fifth year, ending on the...day of...., 19..., \$.....

That the money above agreed to be paid for the services of the aforesaid apprentice shall be paid by the saidemployer into the office of the undersigned clerk of the superior court of.....county, at the times mentioned above for the payment of the same, to the credit of the aforesaid apprentice.

That the said employer shall at the end of the apprenticeship pay the said apprentice six dollars in cash and provide him with a new suit of clothes and a new Bible.

That said employer shall, at the expiration of said apprenticeship, give to said apprentice a certificate in writing, stating that said apprentice has served a full term of apprenticeship of not less than three nor more than five years at such trade or craft as may be specified in said indenture.

That if either the employer or the apprentice, during the continuance of the apprenticeship, shall be unavoidably prevented from performing any of the conditions of the indenture, and a settlement with respect to the same can not be made by the parties to the indenture, the matter shall be referred to arbitrators for settlement, one to be selected by the employer and one on the part of the apprentice, and if they can not decide the controversy, the two arbitrators chosen to select a third, and the decision of any two of said arbitrators to be final as to the matter in controversy.

That the said....., employer, further agrees, during the said apprenticeship, to make an annual report to the clerk of the superior court ofcounty as to whether the stipulations contained in this indenture are being performed or not by him, setting forth the amount

to be paid and the amount actually paid said apprentice and also showing the progress and general condition of the aforesaid apprentice, including his physical, mental and moral condition.

The said, employer, also agrees to make a final report to the said clerk at the conclusion of the said term of apprenticeship herein provided as to whether the stipulations contained in the indenture have been performed or not.

(That the said apprentice, being over fourteen years of age, hereby consents to this indenture.)

In witness whereof, the parties to this indenture have hereunto set their hands and seals the day and year first above written.

..... (Seal.)
 Clerk of the Superior Court.
 (Seal.)
 Employer.
 (Seal.)
 Apprentice.

No. 149.—Form of indenture, apprentice and employer.

This agreement made and entered into this..day of...., 19.., by and between....., employer, and....., a minor of the age of..years, by and with the consent of....., the said minor's parent or guardian (as the case may be), Witnesseth: That the said....., a minor, has voluntarily and of his own free will and accord put and bound himself to, employer, as an apprentice to learn the art or mystery of the trade or craft of; and as an apprentice, the said covenants and agrees to serve from this date for and during and until the end of a term of...years from the date of this indenture, and the said.....hereby covenants not to leave his said employer during said term, and during all said time the said apprentice covenants his employer faithfully, honestly, and industriously to serve, his secrets to keep, all lawful commands readily to obey, and at all times to protect and preserve the property of his said employer, and not suffer or allow any to be injured or wasted, and he will not buy, sell or traffic with his own goods, or the goods of others, nor be absent from his said employer's service, day or night, without leave, and in all things to behave as a faithful apprentice ought to do during said term. And the said employer covenants that he will teach or cause to be carefully and skilfully taught to said apprentice every branch of the business of....., and that he will teach said apprentice, or cause him to be taught, to read and write and the rules of arithmetic to the double rule of three.

And the said....., employer, agrees to pay the said....., apprentice, during the term of his apprenticeship, as compensation for his services the following amounts, to be paid yearly or monthly:

For the first year	....	dollars	per year or month,	payable	....
" second	"	"	"	"	"
" third	"	"	"	"	"
" fourth	"	"	"	"	"
" fifth	"	"	"	"	"

And the said employer further covenants to provide at all times during the continuance of said term suitable and proper board, lodging, medical attention and clothes for said apprentice, and at the expiration of said apprenticeship to give said apprentice a certificate in writing, stating that said apprentice has served a full term of apprenticeship of.....years at the trade of.....

And it is further covenanted that if either the employer or the apprentice, during the continuance of the apprenticeship, shall be unavoidably prevented from performing any of the conditions of the in-

denture, and a settlement with respect to the same can not be made by the parties to the indenture, the matter shall be referred to arbitrators for settlement, one to be selected by the employer and one on the part of the apprentice, and if they can not decide the controversy, the two arbitrators chosen to select a third, and the decision of any two of said arbitrators to be final as to the matter in controversy.

..... (Seal.)
Employer.
..... (Seal.)
Apprentice.

I do hereby consent to, ratify and approve of the binding of....., as an apprentice, as set forth in the above indenture. This..day of, 19..

..... (Seal.)
Parent.
..... (Seal.)
Guardian.

No. 150.—Affidavit of county commissioner in bastardy.

North Carolina, county,township.

Before, justice of the peace.

State
v. D..... } Affidavit.

....., being duly sworn, deposes and says, that he is one of the commissioners of county, and that, a single woman, residing in said county, is big with child (or delivered of a child), and that the said bastard child is likely to become a county charge.

.....
Subscribed and sworn to before me, this..day of....., 19..
....., Justice of the Peace.

No. 151.—Warrant in bastardy against the woman.

North Carolina,county,township.

State
v. D..... } Before....., justice of the peace.

State of North Carolina, to the sheriff or any other lawful officer of.....county—Greeting:

Whereas, information hath been made to me, E F, a justice of the peace for the county of....., upon the oath of G H, a commissioner of said county, that C D, of said county, is big with child, which child, when born will be a bastard and may become chargeable to the county (or has been delivered of a bastard child which is likely to become chargeable to the county):

These are therefore to command you to apprehend the said C D, and bring her before me, or some other justice of the peace for said county, to be examined on oath respecting the father of said child.

Dated this..day of....., 19..
....., Justice of the Peace.

No. 152.—Undertaking of the mother.

(Title as in No. 150.)

Know all men by these presents, that we,, and....., are held and firmly bound unto the state of North Carolina in the sum of \$200, to the payment of which we bind ourselves, our heirs, executors

and administrators, jointly and severally, firmly by these presents. Signed and sealed this..day of...., 19..

The condition of this obligation is such, that whereas the above bounden.....has been charged before....., justice of the peace, with being the mother of a bastard child (or with being big with child), which child (when born) may become chargeable to the county, and has refused to declare the father of said child:

Now, therefore, if the said.....shall well and truly maintain, or cause to be maintained, the said bastard child, and shall indemnify the said county from any and all charges for the maintenance of said child, then this obligation to be void, otherwise to remain in full force and effect.

This..day of...., 19.. (Seal.)
 (Seal.)
 (Seal.)

Approved:, Justice of the Peace.

No. 153.—Affidavit of woman in bastardy.

North Carolina,county,township.

State
 v. } Before....., justice of the peace.
 C..... D..... }

A B, above named, voluntarily maketh affidavit that she is with child, which, when born, will be a bastard, (or if the child is already born, the affiant shall state there has been begotten upon her a child, which child is a male [or female] bastard, of the age of..years, being less than three years old); and the said A B further makes affidavit that C D is the father of her said bastard child. Wherefore she prays that a warrant may issue against the said....., to the end that he may be compelled to answer her affidavit and complaint, as required by law.

A B, Affiant.

Sworn and subscribed before me, this..day of...., 19..
, Justice of the Peace.

No. 154.—Warrant against reputed father.

(Title as in No. 150.)

State of North Carolina, to the sheriff or any other
 lawful officer of.....county—Greeting:

Whereas, upon the -voluntary affidavit and complaint of A B, the mother of a bastard child, which affidavit and complaint was this day taken before me, a justice of the peace for the county aforesaid (or the affidavit of G H, one of the county ocmmissioners of said county), it appears that A B is the mother of a bastard child, aged ... (or is big with child, which child, when born, will be a bastard); and the said A B hath confessed that C D, of the county aforesaid, did beget the said child, and hath charged him with the same (and the said commissioner having made affidavit that said child is a pauper, and about to become chargeable to the county):

These are therefore to command you to apprehend the said.....and bring him before me, or some other justice of the peace for said county, to answer the said charge.

Dated this..day of...., 19..
, Justice of the Peace.

Note.—Magistrate will strike out words between parenthesis () to suit the case, when not brought by the commissioner.—Ed.

No. 155.—Bastardy bond in justice's court for maintenance of child.

(Title as in No. 150.)

Know all men by these presents, that we, and, are held and firmly bound unto the state of North Carolina in the sum of \$....., to the payment of which we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Signed and sealed this ... day of, 19...

The condition of this obligation is such, that whereas the said C D stands charged with the maintenance of a bastard child begotten by himself upon the body of A B, of the county of.....

Now, therefore, if the said C D shall well and truly maintain or cause to be maintained the said bastard child, as ordered by the court, and shall indemnify the said county from any and all charges for the maintenance of said child, and pay the costs in said action, then this obligation to be void; otherwise to remain in full force and effect.

This..day of...., 19..

..... (Seal.)
 (Seal.)
 (Seal.)

Approved:, Justice of the Peace.

No. 156.—Bond for maintenance.

(Title as in No. 150.)

Know all men by these presents, that we.....and.....are held and firmly bound unto the state of North Carolina in the sum of \$....., for payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators.

Signed and sealed this..day of...., 19..

The condition of the above obligation is such that, whereas C D stands charged and adjudged as the father of a bastard child begotten by him on the body of A B, of said county; and whereas, it has been adjudged that said C D pay into this court the sum of fifty dollars as an allowance to the said A B, the mother of the said bastard child, to be paid in installments of five dollars per week, beginning from the date of this judgment, until said allowance is fully discharged; and whereas, it has been further adjudged that the said C D pay a fine of ten dollars and the costs of this action immediately:

Now, therefore, if the said C D shall well and truly perform the aforesaid judgment and every part thereof, and shall also indemnify the said county of.....from any and all charges for the maintenance of the aforesaid bastard child, then this obligation to be null and void; otherwise to remain in full force and effect.

This..day of...., 19..

..... (Seal.)
 (Seal.)
 (Seal.)

Signed, sealed and delivered in the
 presence of....., Justice of the Peace.

No. 157.—Recognizance on appeal in bastardy.

(Title as in No. 150.)

Be it remembered that we.....and.....acknowledge ourselves indebted to the state of North Carolina in the sum of \$....., lawful money of the United States.

The condition of this recognizance is such that, if the said C D shall appear at the next term of the superior court to be held in and for said county of....., at the court-house in....., on the....Monday in..

...., to answer a charge of bastardy prosecuted by A B, and abide by and perform the order of the court and not depart the said court without leave, then this recognizance to be null and void; otherwise to remain in full force and effect.

This..day of...., 19..

..... (Seal.)
 (Seal.)
 (Seal.)

Taken, subscribed and acknowledged before me, this..day of....., 190.., Justice of the Peace.

Note.—A transcript of the proceedings in the case shall be sent to the superior court in case of appeal in bastardy, as in other actions.—Ed.

No. 158.—Commitment of defendant.

(Title as in No. 150.)

State of North Carolina, to the sheriff or keeper of the common jail of.....county—Greeting:

Whereas,, the prisoner herewith sent you, has this day been convicted before me, an acting justice of the peace, in and for..... township in said county on a charge of bastardy, and has failed to find security on appeal in said action to the next term of the superior court of said county:

You are therefore commanded to receive the said....into the common jail of the county of....., there to remain until he shall find such security, or shall otherwise be discharged according to law.

....., Justice of the Peace.

This..day of...., 19..

State of North Carolina, to, of county—Greeting:

You are hereby commanded and required to execute the foregoing commitment by conveying and delivering into the custody of the sheriff or keeper of the common jail of county the body of

....., Justice of the Peace.

This .. day of, 19...

No. 159.—Bond for maintenance in the superior court.

North Carolina, county—In the superior court.

State
 vs.
 C..... D..... }

Know all men by these presents, that we, are held and firmly bound unto the state of North Carolina in the sum of \$...., for payment of which we bind ourselves, our heirs, executors and administrators, jointly and severally. Signed and sealed this .. day of, 19...

The condition of the above obligation is such, that whereas, the said C D stands charged with the maintenance of a bastard child, begotten by him upon the body of A B, of said county: Now, therefore, if the said C D shall perform the order of the superior court of said county concerning the maintenance of said child, and indemnify the said county from any and all charges for the maintenance of the same, then the above obligation is to be void; otherwise to remain in full force and effect.

This .. day of, 19...

..... (Seal)
 (Seal)
 (Seal)

Signed, sealed and delivered in the presence of

....., Clerk of the Superior Court.

No. 160.—Mortgage note.

\$500.

Raleigh, N. C., June 1, 1903.

Six months from date, I promise to pay to the order of A..... B..... the sum of \$500, with interest from date at the rate of 6 per cent per annum, payable semi-annually, for value received, the said sum being secured by first mortgage on real estate of even date with this note.

Witness:.....

C D (Seal.)

No. 161.—Negotiable note.

\$100.

Raleigh, N. C., Sept. 1, 1903.

One day after date, I promise to pay to the order of A..... B..... one hundred dollars, with interest from date, for value received. Witness my hand and seal.

C D. (Seal.)

Witness:

No. 162.—Note by two or more parties.

\$200.

Raleigh, N. C., Jan. 1, 1903.

Thirty days from date we, or either of us, as principals, promise to pay to the order of A B, two hundred dollars for value received.

C D. (Seal.)

E F. (Seal.)

No. 163.—Note with sureties.

\$400.

Raleigh, N. C., July 1, 1903.

Sixty days after date, we, A B, as principal, and C D and E F, as sureties, promise to pay to the order of G H four hundred dollars, with interest from date at the rate of 6 per cent per annum, for value received.

A B. (Seal.)

C D. (Seal.)

E F. (Seal.)

No. 164.—Bill of exchange.

\$500.

Raleigh, N. C., Feb. 4, 1903.

Three months from date (or at sight, or three days after sight, or on demand, as the parties may agree), pay to the order of A B five hundred dollars, value received, and charge to account of C D.

To E F, New York.

No. 165.—Draft.

\$200.

Raleigh, N. C., July 1, 1903.

.....pay to the order of....., \$....., value received, and charge same to the account of

To

No. 166.—Protest of notary.

United States of America—State of North Carolina.

On this..day of...., in the year of our Lord 19.., at the request of, in....., I,, notary public, duly admitted and sworn, dwelling in....., presented the original..... (which is hereto attached) for..... and received for answer....., which, not being satisfactory, I then, by letters addressed to the drawer and endorsers, under cover, to.....did notify them of the default aforesaid. Whereupon I, the said notary, at the request aforesaid, did protest and by these presents do publicly and solemnly protest, as well against the drawer, drawee and endorser of the said....., as against all others

whom it doth or may concern, for exchange, re-exchange, and all costs, damages and interest already incurred, and to be hereafter incurred for want of.....of the.....

In testimony whereof, I have hereunto set my hand and affixed my notarial seal of office, this..day of...., 19..

(L. S.) , Notary Public.

My commission expires the..day of...., 19..

No. 167.—Notice of protest.

Take notice that a..... for \$...., dated..day of....., 19.., drawn by A B and endorsed by C D, was this day protested for non-payment, and that the holder looks to you for the payment thereof, payment of the same having been this day demanded and refused.

E F, Notary Public.

My commission expires the..day of...., 19..

To A B, drawer.

Note.—A protest for non-acceptance of a bill of exchange may be easily varied from the above by inserting, wherever payment and non-payment occur, acceptance and non-acceptance, instead.—Ed.

No. 168.—Letter of credit—general form.

Raleigh, N. C., July 1, 1903.

Gentlemen: Please deliver to A B, books and merchandise in your line, such as he may select, to an amount not exceeding altogether the sum of fifteen hundred dollars, and I will be responsible to you for his payment for the same, upon such terms as he may arrange; you to notify me of the amount and terms of credit you may give him, and if default is made in the payment to give me notice without unreasonable delay.

Very truly,

C D.

To E F & Co., Baltimore, Md.

No. 169.—Bond of clerk of superior court.

North Carolina,county.

Know all men by these presents, That we.....are held and firmly bound unto the state of North Carolina in the sum of.....dollars to the payment of which we bind ourselves, our heirs, executors and administrators firmly by these presents.

Signed and sealed..day of...., 19..

The condition of the above obligation is such, that whereas the above bounden.....has been elected clerk of the superior court of.....county for the term of four years from and after the..day of...., 19..: Now, if the said.....shall account for and pay over according to law all moneys and effects which have come or may come into his hands by virtue or color of his office, or under an order or decree of a judge, even though such order or decree be void for want of jurisdiction or other irregularities, and shall diligently preserve and take care of all books, records, papers and property which have come or may come into his possession by virtue or color of his office, and shall in all things faithfully perform the duties of his office as they are or hereafter shall be prescribed by law, then this obligation is to be void; otherwise to remain in full force and effect.

..... (Seal.)

..... (Seal.)

..... (Seal.)

Witness:

.....makes oath that he is worth, over and above all his debts and liabilities and his homestead and personal property exemptions, the sum of \$.... (the sum must not be less than \$10,000).

.....

..... makes oath, etc.

The above named sureties justified before me this..day of...., 19...
as indicated in their affidavits.

....., Chm'n Board Com'rs.....County.

Approved by the board:

....., Clerk Board Com'rs.....County.

The execution of the foregoing bond was this day acknowledged before me by..... and the execution of the same by..... was this day proven before me by the oath and examination of....., the subscribing witness thereto. This..day of...., 19..

....., Clerk Board Com'rs.....County.

Registered in the office of the register of deeds of county, in book of registry of official bonds, page ..., the ... day of, 19...

No. 170.—Oath of clerk of the superior court.

I,, do solemnly swear (or affirm) that I will support the constitution of the United States; so help me, God.

I,, do further solemnly and sincerely swear (or affirm) that I will be faithful and bear true allegiance to the state of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the constitution of the said state, not inconsistent with the constitution of the United States, to the best of my knowledge and ability; so help me, God.

I,, do further swear (or affirm) that, by myself or any other person, I neither have given, nor will I give, to any person whatsoever, any gratuity, gift, fee or reward, in consideration of my election or appointment to the office of clerk of the superior court for the county of.....; nor have I sold, or offered to sell, nor will I sell or offer to sell, my interest in the said office. I also solemnly swear that I do not, directly or indirectly, hold any other lucrative office in the state. And I do further swear that I will execute the office of clerk of the superior court for the county of.....without prejudice, favor, affection or partiality, to the best of my skill and ability; so help me, God.

No. 171.—Plaintiff's mortgage for costs.

North Carolina,county.

This indenture made this..day of...., 19.., between A B, of the first part, and C D, of the second part, both of the county and state aforesaid, Witnesseth: That whereas the said party of the first part is about to commence an action in the superior court of.....county, against the party of the second part, for the recovery of certain real estate (or state any other cause of action); and whereas, the said party of the first part desires to give this indenture in lieu of a bond required by statute, in the sum of two hundred dollars for the costs of said action: Now, therefore, in consideration of the premises and the payment of one dollar to party of the first part by party of the second part, the receipt of which is hereby acknowledged, the said party of the first part has bargained and sold, and by these presents does bargain, sell and convey to the party of the second part, his heirs and assigns, the following described real estate in.....county..... township, adjoining the lands of.....and others, and bounded as follows: (here describe land). To have and to hold the same, together with the hereditaments and appurtenances thereunto belonging, to the said party of the second part, his heirs and assigns. And the said party of the first part covenants with the said party of the second part,

his heirs and assigns, that he is seized in fee-simple of said premises; that he has good right to make this conveyance; that the premises are free from all incumbrances; and that he will forever warrant and defend the title to the same against all lawful claims. But this indenture is made on this special trust, that if the said party of the first part shall pay to the said party of the second part all such costs as he may recover of the said party of the first part, in said action, not to exceed the sum of two hundred dollars, then this indenture shall be void; otherwise to remain in full force and effect. But if default shall be made in the payment of said costs by said party of the first part to the amount aforesaid when so adjudged by the court, then he does hereby fully authorize and empower the said party of the second part to sell the above described real estate at public auction for cash at the court-house door of.....county, after advertising the same for thirty days in some newspaper published in.....county and also by posting a notice at some conspicuous place at the court-house door and at three other public places in said.....county for thirty days immediately preceding the sale, and make deed to the purchaser in fee-simple, and out of the moneys arising from said sale to pay the costs which have accrued in the aforesaid action, and to secure the payment whereof this mortgage is given as aforesaid, and the costs and charges of sale (the whole not to exceed two hundred dollars) and pay the surplus, if any, to the said party of the first part, his heirs or assigns.

In testimony whereof, the said party of the first part has hereunto set his hand and seal this..day of...., 19..

....., (Seal.)
Executed in the presence of.....

No. 172.—Mortgage of guardian in lieu of bond.

North Carolina,county.

This indenture, made this..day of...., 19.., between A B, of the aforesaid county and state, of the first part, and the state of North Carolina as party of the second part, Witnesseth: That whereas the said party of the first part is about to qualify as general guardian of the estate of.....and....., minor children; and whereas, the said party of the first part is required to enter into bond to the state of North Carolina in the sum of \$...., before qualifying as such guardian and entering upon his duties; and whereas, the said party of the first part is desirous of giving this indenture for the said sum of \$.... in lieu of the bond required as aforesaid: Now, therefore, in consideration of the premises and the payment of \$1, the receipt of which is hereby acknowledged, the said party of the first part has bargained and sold, and by these presents does bargain, sell and convey to the state of North Carolina in fee-simple, the following described real estate in.....county,township, and adjoining the lands ofand others, and bounded as follows: (here describe land); to have and to hold the same, together with all the hereditaments thereunto appertaining. And the said party of the first part covenants with the party of the second part and its assigns that he is seized in fee-simple of said premises; that he has good right to convey the same, and that the said premises are free from incumbrances, and that he will forever warrant and defend the title to the same against all lawful claims.

But this indenture is made on this special trust: That if the said party of the first part shall well and faithfully execute the trust reposed in him as said guardian, and obey all lawful orders of the clerk or judge touching the guardianship of the estate committed to him, then this indenture shall be null and void; otherwise to remain in full force and effect. But if default shall be made by the party

of the first part in his duties as guardian, as above recited, then he hereby fully authorizes and empowers the clerk of the superior court of.....county, and his successor in office, to sell the above described real estate at public auction, for cash, at the court-house door of.....county, after advertising the same for thirty days in some newspaper published in said county and also by posting a notice at some conspicuous place at the court-house door and at three other public places in said.....county for thirty days immediately preceding the sale, and make title to the purchaser in fee-simple; and out of the moneys arising from such sale to pay all damages occasioned by said default to the person or persons entitled thereto, including the costs of any action establishing said default, as well as costs of sale, and pay the surplus, if any, to the party of the first part, his heirs or assigns.

In testimony whereof the party of the first part has hereunto set his hand and seal, the day and year above written.

Executed in the presence of..... (Seal.)

No. 173.—Mortgage in lieu of recognizance.

North Carolina,county.

This indenture, made this..day of...., 19.., between A B of said state and county, party of the first part, and the state of North Carolina, party of the second part, Witnesseth: That whereas, in an action tried before....., a justice of the peace of.....county, on the..day of...., 19.., the party of the first part was required to enter into recognizance with sureties in the sum of \$.... for his appearance at the next term of the superior court for.....county, then and there to answer a charge against him for.....; and whereas, the said party of the first part desires to give this indenture for the sum of \$.... in lieu of said recognizance, payable to the state of North Carolina: Now, therefore, in consideration of the premises and the payment of one dollar, the receipt of which is hereby confessed, the said party of the first part has bargained and sold, and by these presents doth bargain, sell and convey to the state of North Carolina, in fee-simple, the following described real estate in.....county,township, North Carolina, adjoining the land of..... and others, and bounded as follows: (here describe land). To have and to hold the same, together with all the hereditaments thereunto appertaining, to the said state. And the said party of the first part covenants with the party of the second part and its assigns that he is seized in fee-simple of said premises; that he has good right to convey the same; that the said premises are free from all incumbrances, and that he will forever warrant and defend the title to the same against all lawful claims.

But this indenture is made on this special trust, that if the said party of the first part shall personally appear at the next term of the superior court for.....county, to be held on the..Monday after the..Monday in...., 19.., then and there to answer a charge to be preferred against him for....., and to do and receive what shall then and there be enjoined upon him by the court, and shall not depart the same without leave, then this conveyance is to be void, otherwise in full force. But if the said party of the first part shall fail to appear as above recited, then and in that case he does hereby fully authorize and empower the clerk of the superior court of said county of..... to sell the above described real estate at public auction to the highest bidder for cash, at the court-house door of said county, after advertising the same for thirty days in some newspaper published in said county and also by posting a notice at some conspicuous place at the court-house door and three other public places in said.....county for thirty days im-

mediately preceding the sale, and make deed to the purchaser in fee-simple, and out of the moneys arising from such sale, to pay the said sum of \$.... and the costs of sale, and pay the surplus, if any, to the party of the first part.

In testimony whereof, the party of the first part has hereunto set his hand and seal the day and year first above written. A B. (Seal.)

Executed in the presence of.....

Note.—The foregoing mortgages may be easily changed so as to meet the requirements of other bonds mentioned in chapter 8 of Part 5 of the Manual, page 282.

No. 174.—Opening court.

The sheriff is held responsible for the maintenance of order in the court room during the session of the court. As soon as the judge comes into the court room, the sheriff shall cause the bystanders to make way for him that he may ascend the bench; the clerk shall cause the crier of the court to make the following proclamation:

"O yes! O yes!! O.yes!!! this honorable court for the county of..... is now open and sitting for the dispatch of its business. God save the state and this honorable court."

No. 175.—Calling jurors and drawing jury.

The clerk will then cause the following proclamation to be also made:

"O yes! O yes!! O yes!!! Ye good men who have been returned to serve as jurors at this honorable court, answer to your names, each of you, and save your fines."

The clerk will then call over the list of jurors for the first week; and the names of all persons returned as jurors and who are present are to be written on scrolls of paper and put into a box or hat and drawn out by a child under ten years old. The child under ten years old is to be procured by the clerk before the opening of the court, so that no delay may arise. As each man's name is drawn out it is announced aloud by the clerk, and he takes his seat in the jury box. Those who do not respond are to be called out by the crier, and if they fail to appear, a fine nisi should be entered, and a sci. fa. should issue to the succeeding term; but if any reasonable excuse appear to the court, the clerk should mark the absent juror "spared." The first eighteen jurors of those drawn and qualified shall be a grand jury for the court. The whole array is challenged, and if any are disqualified they stand aside and are put upon the petit jury. When the panel of the grand jury is thus made, the clerk delivers it to the judge, who will appoint a foreman, usually named by the clerk.

When the court has appointed the foreman, the clerk will again call the names of the persons empaneled for the grand jury, who will answer respectively. The clerk will then request them to stand together and hear their foreman's oath.

No. 176.—Oath of foreman of grand jury.

The clerk will then swear the foreman of the grand jury as follows:

"You, as foreman of this grand inquest for the body of this county, shall diligently inquire and true presentment make of all such matters and things as shall be given you in charge; the state's counsel, your fellows' and your own, you shall keep secret; you shall present no one for envy, hatred or malice; neither shall you leave anyone unpresented for fear, favor or affection, reward or the hope of reward; but you shall present all things truly, as they come to your knowledge, according to the best of your understanding; so help you, God."

No. 177.—Oath of grand jury.

The rest of the grand jury are then sworn as follows:

"The same oath which your foreman hath taken on his part, you, and each of you shall well and truly observe and keep on your part; so help you, God."

No. 178.—Empaneling of grand jury.

After the grand jury are thus sworn, the clerk calls on the crier to count; and as the clerk names them the crier counts them, and after he has called their names and counted them, he shall say: "Gentlemen of the grand jury, sit together and hear your charge." The crier will then command: "All persons will keep silence while the charge is given to the grand jury." The judge then gives his charge to the jury. When the charge is finished, an officer appointed by the sheriff is ordered to attend upon the grand jury, to whom the clerk will administer the following oath:

No. 179.—Oath of officer of grand jury.

"You swear (or affirm) that you will faithfully carry all papers sent from the court to the grand jury, or from the grand jury to the court, without alteration or erasement, and without disclosing the contents thereof; so help you, God."

No. 180.—Calling petit jury.

The clerk will then call the names of persons left in the hat or box, and those stood aside for cause from the grand jury, who shall constitute the petit jury. As they are called they go into the box, whereupon the clerk administers to them the following oath:

No. 181.—Oath of petit jury.

"You and each of you swear (or affirm) that you will well and truly try all issues in criminal actions and all civil actions which shall come before you during this term, and true verdicts give according to the evidence thereon; so help you, God." (See also p. 551, subdivisions (22) and (23), *infra*.)

Same oath to talesmen, except by using the word "day" instead of "term." Said talesmen to be chosen from the bystanders by the sheriff when needed to make a full panel.

No. 182.—Oath of witness before grand jury.

When any person is to give evidence to the grand jury the foreman shall swear such person in this manner: "You swear that the evidence you shall give to the grand jury upon this bill of indictment against A B, shall be the truth, the whole truth, and nothing but the truth; so help you, God."

When a witness is to be summoned before the grand jury, the foreman thereof, or the solicitor, shall order the clerk to do so in writing, stating the name or names of the parties against whom his testimony is to be given.

If the grand jury find an indictment against any one, the foreman will write on the back of said indictment, "A true bill"; but if they have not sufficient evidence to find the indictment, the foreman will endorse "Not a true bill," and in either case will subscribe his name.

No. 183.—Closing court temporarily.

When the court rises, the crier shall make proclamation: "O yes! O yes!! O yes!!! This honorable court stands adjourned until to-morrow morning at..o'clock; God save the state and this honorable court."

No. 184.—Opening court after temporary adjournment.

When the court sits on the next day, or after a recess, the clerk shall cause the crier to make proclamation thus: "O yes! O yes!! O yes!!! This honorable court for the county of....., has now resumed its sitting for the dispatch of business. God save the state and this honorable court."

When the court sees cause, the grand jury may be sent for, or when the grand jury of their own accord appear, the clerk shall call them by their names, and then ask them if they have agreed to find any bills of indictment or presentments. If they say "Yes," the clerk shall bid them to present them to the court, and add: "You consent that the court may amend matters of form, not changing any matter of substance?" The clerk, out of respect to them, shall require the sheriff to make way for the gentlemen of the grand jury.

No. 185.—Closing of court at end of term.

When the court adjourns at the end of the term the crier shall make proclamation as follows: O, yes! O, yes!! O, yes!!! This honorable court stands adjourned sine die. God save the state and this honorable court."

No. 186.—Calling out a defendant in a criminal case.

When a defendant is to be called out the crier will make proclamation as follows: Oh, yes! Oh, yes!! Oh, yes!!! John Jones! John Jones! Jones! Come into court this day as you are bound to do or your forfeiture will be recorded."

No. 187.—Calling out a witness.

When a witness is to be called out the crier will make proclamation as follows: "Oh, yes! Oh, yes!! Oh, yes!!! John Jones! John Jones! John Jones! Come into court this day as you have been subpoenaed to do or you will be fined."

No. 188.—Arraignment of a prisoner in capital case.

When a prisoner is to be arraigned, the crier will make the following proclamation: "O yes! O yes!! O yes!!! All persons will keep silence for this honorable court is about to proceed to the pleas of the state and the arraignment of A B, the prisoner at the bar, upon his life and death. All persons that are bound by recognizance to give evidence against the prisoner at the bar, draw near and give your evidence upon pain of forfeiture of your recognizance."

The clerk will then say to the prisoner: "A B, stand up; hold up your right hand;" which being done, the clerk then says: "You stand charged by the name of A B, on the following indictment": (Here read the indictment verbatim), and the clerk then says:

"How say you, A B; are you guilty of the felony of....., whereof you stand indicted, or not guilty?"

A B answers—"Not guilty."

Clerk—"How will you be tried?"

A B answers—"By God and my country."

Clerk—"May God send you a true deliverance."

The clerk will then make entry of the plea on his docket.

Should the prisoner on his arraignment not confess the felony whereof he stands indicted, nor plead guilty thereto, but stands mute, or otherwise pleads such matter as shall be no direct answer to the offence, the court shall order the plea of "not guilty," to be entered on behalf of such person, which shall have the same force and effect as if pleaded by the prisoner.

No. 189.—Calling the jurors in capital case.

When the prisoner pleads himself "not guilty" and puts himself upon his country, the clerk calls over the names of the jury and addresses them thus: "You good men that are called to try the issue joined between the state and the prisoner at the bar, answer to your names upon pain and peril that shall fall thereon."

The clerk then puts the names of the jurors upon scrolls of paper and puts them into a box or hat, and a child under ten years of age, to be procured by the clerk, draws them out one at a time. Previous to this, however, the clerk thus admonishes the prisoner at the bar:

No. 190.—Warning the prisoner of his rights in capital case.

"These good men that you shall now hear called are to pass between the state and you upon your life and death; if therefore you will challenge them, or any of them, you must challenge them as they come to the book to be sworn, before they are sworn, and you shall be heard."

No. 191.—Selecting the jury in capital case.

Then the clerk calls the jurors to be sworn, every man severally, and when each juror is called to the book to be sworn, and before he is sworn, the clerk demands, "What says the state to the juror?" The state may "pass" him, or stand him at the foot of the panel (until one-tenth of the panel have been so disposed of), or have him "sworn for cause" and examine him as to his competency to serve. In swearing a witness for cause the clerk shall administer to him the following oath: "You swear that you will true answers make to the court or to any one under its direction touching your competency to serve as a juror; so help you, God."

If the state rejects the juror or has him to stand at the foot of the panel, another is called and the same question asked as before. If the state "passes" the juror, the clerk then demands, "What says the defendant to the juror?" The defendant may have the juror "sworn for cause" and examine him as to his competency to serve. At any time after a juror has been challenged for cause and while his examination is pending the other side may "admit the cause" and have the juror stood aside. When the defendant is ready to pass upon the juror he says to clerk, "Tender him," which the clerk does in the following words:

"Juror, look upon the prisoner; prisoner, look upon the juror; do you like him?" If the prisoner says "Yes," the clerk then administers to the juror the following oath:

No. 192.—Oath of juror in capital case.

"You swear (or affirm) that you will well and truly try, and true deliverance make, between the state and the prisoner at the bar, whom you shall have in charge, and a true verdict give according to the evidence; so help you, God."

No. 193.—Empaneling the jury in capital case.

When twelve jurors are obtained the clerk then calls the names of the jury one by one, the crier counting after him. When that is done

the clerk must ask the jury if they have all been sworn, and if they answer "Yes," the clerk commands the prisoner to hold up his right hand, and says to the jury:

"Gentlemen of the jury, look upon the prisoner and hearken to his cause. He stands indicted by the name of....., late of....., on the following bill of indictment." (The clerk reads the whole indictment and then says): "Upon this indictment he hath been arraigned and thereunto hath pleaded 'Not guilty,' and for his trial hath put himself upon God and his country, which country you are; so that your charge is to inquire whether he be guilty of the felony and murder whereof he stands indicted or not guilty; if you find him guilty, you shall say so; if you find him not guilty, you shall say so and no more. Sit together and hear the evidence and render your verdict accordingly."

No. 194.—Oath of witnesses in capital case.

The witnesses in the case shall be sworn as follows:

"You swear (or affirm) that the evidence you shall give to the court and jury in this trial, between the state and the prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth; so help you, God."

No. 195.—Oath of officer of jury in capital case.

The clerk shall swear the officer in charge of the jury as follows:

"You swear (or affirm) that you will keep every person, sworn of this jury, together in some private or convenient place, without meat or drink (water excepted). You shall not suffer any person to speak to them, neither shall you speak to them yourself, unless it be to ask them whether they are agreed in their verdict, but with leave of the court; so help you, God."

The officer after the evidence and the argument of counsel and the charge of the judge have been heard, conducts the jury to some convenient place where they may consult upon their verdict, and continues at the door until they have agreed upon their verdict.

No. 196.—Rendering verdict in capital case.

When the jury are agreed on their verdict and have returned into court, the clerk says to them: "Gentlemen of the jury, answer to your names." After they have all done so, the clerk says: "Have you all agreed on your verdict?" The jury then say: "We have." The clerk says: "Who shall speak for you?" The jury say: "Our foreman," The clerk addresses the prisoner: "A B, hold up your right hand," which being done the clerk says to the jury: "Gentlemen of the jury, look upon the prisoner; what say you, is he guilty of the felony and (murder) whereof he stands indicted, or not guilty?"

The foreman says: "Guilty" or "not guilty," as the case may be.

The clerk then says to the jury, "Hearken to your verdict as the court recordeth. You say that A B is guilty (or not guilty), of the felony and (murder) whereof he stands charged; so say you all?"

If the jury should be polled, each juror answers the question as put to the foreman, "guilty," or "not guilty," as the case may be.

No. 197.—Passing sentence in capital case.

When sentence is ready to be passed by the judge, the clerk makes proclamation:

"O yes! O yes!! O yes!!! All persons are commanded to keep silence whilst judgment is given against the prisoner at the bar, upon pain of imprisonment."

The clerk then says to the prisoner:

"You remember that before this you have been indicted for this felony by you done and committed; you have been arraigned and pleaded "not guilty," and for your trial you have put yourself upon God and your country, which country have found you guilty. What can you now say for yourself, why, according to the verdict passed against you, you should not have judgment to die? What say you, A B?"

No. 198.—Oaths—all officers.

(For oaths of all officers, see section 2932, page 548, of this volume.)

No. 199.—Transcript of record for the supreme court in a capital case.

In the supreme court of North Carolina,term, 19..

State

v.

} Appeal by.....

.....

State of North Carolina,county.

Be it remembered, that at a superior court begun and held for the county of....., at the court-house in....., on the..Monday of....., in the year of our Lord one thousand nine hundred and, before the Honorable....., judge,, sheriff of said county, makes return that in obedience to the writ of venire facias heretofore to him directed, he has summoned the following jurors (here name the jurors on the original venire); and thereupon, by the oath of (here name the grand jurors), good and lawful men of the county aforesaid, then and there drawn from the said venire, and then and there empaneled, sworn and charged to enquire for the state of and concerning all crimes and offences committed within the body of said county, it is presented in manner and form following, that is to say (here copy the indictment). And the saidis brought to the bar of the court here, in his proper person, by the said....., sheriff of.....county, in whose custody he is. And forthwith it being demanded of him how he will acquit himself of the premises in the said indictment above specified and charged upon him, he saith that he is not guilty thereof, and thereof for good and for evil he puts himself upon the country. And, solicitor, who prosecutes for the state on this behalf, does the like.

Therefore let a jury come of good and lawful men, by whom the truth of the matter may be better known. The prisoner,, is remanded to jail. And at the same term of the said court the said is again brought to the bar of the said court, in the custody of the said, sheriff of.....county, and the following jury of good and lawful men, to-wit (here name the jurors), being chosen, tried, sworn, and empaneled to speak the truth of and concerning the premises, upon their oath say, that the said.....is guilty of the felony and murder in manner and form as charged in the bill of indictment (here set forth the proceedings of the court between the verdict and judgment). And upon this it is demanded of the said....., if he hath anything to say wherefore the court here ought not, upon the premises and verdict aforesaid, to proceed to judgment and execution against him, who nothing further saith than he hath already said. Whereupon all and singular the premises being seen, and by the court here fully understood, it is considered by the court here that the said.....be taken to the jail of.....county, whence he came, there to remain until the ..day of....., and that on that day he be taken by the sheriff of said county to the place of public execution of said county, between the

hours of.....and....., and there hanged by the neck until he be dead; and it is further considered that the state do recover of the saidthe costs of this prosecution.

From the said judgment the said.....prays an appeal to the supreme court, and it appearing to the satisfaction of the court here that the said.....is insolvent, the said.....is allowed to appeal without security.

Statement of the case made out by the honorable....., judge of said court: (here insert the statement of the case made out by the judge.)

I,, clerk of the superior court of.....county, do hereby certify that the foregoing is a full, true and perfect transcript of the record of said court, in an indictment for murder, lately pending in our said court between the state and..... In testimony whereof I hereunto subscribe my name and affix the seal of said court, at office in....., on the ..day of....., in the year of our Lord, one thousand nine hundred and....

(C. S. C. Seal.)

Clerk of the Superior Court of.....County.

No. 200.—Transcript of record for the supreme court in an indictment for a misdemeanor.

In the supreme court of North Carolina,term, 19..

State

v.

} Appeal by.....

.....

State of North Carolina,county.

Be it remembered, that at a superior court, begun and held for the county of....., at the court-house in....., on the..Monday in...., in the year of our Lord one thousand nine hundred and...., before the Honorable....., judge, upon the oath of (here name the grand jurors), good and lawful men of the county aforesaid, duly summoned, drawn, sworn, and charged, to inquire for the state of and concerning all crimes and offenses committed within the body of said county, it is presented in manner and form, that is to say, (here copy the indictment), whereupon, the sheriff of said county is commanded that he cause the said..... to come and answer; and afterwards, to-wit, at the term of said court, begun and held for the county aforesaid, on the...Monday of....., in the year of our Lord, one thousand nine hundred and...., before the Honorable....., judge, cometh the said....., in his own proper person, and having heard the said indictment read, he, the said, saith that he is not guilty thereof, and of this he puts himself upon the country, and....., solicitor, who prosecutes for the state in this behalf, doth the like. Therefore let a jury come of good and lawful men, by whom the truth of the matter may be better known. And thereupon the following jurors, to-wit, here name them), being chosen, tried, sworn, and empaneled to speak the truth of and concerning the premises, in the said indictment specified, do say upon their oath that the said.....is guilty thereof in manner and form as charged in the bill of indictment (here set forth the proceedings of the court between the verdict and the judgment). And it is thereupon considered by the court that the said.....shall pay a fine of.....dollars, and that he stand committed to the custody of the sheriff until the said fine and the costs of this prosecution be paid. From the above judgment the said.....prays an appeal to the supreme court, and it is allowed to him, upon his giving bond, with.....and.....as sureties. Appeal bond executed and herewith sent.

Statement of the case by the Honorable....., judge of said court. (Here copy the statement.)

I,, clerk of the superior court of.....county, do hereby certify that the foregoing is a full, true and perfect transcript of the record of said court in the case of the state against..... In testimony whereof, I do hereunto subscribe my name and affix the seal of said court, at office in....., this..day of....., in the year of our Lord, one thousand nine hundred and.....

(C. S. C. Seal.)

Clerk of the Superior Court of.....county.

No. 201.—Transcript of record for the supreme court in a civil suit.

In the supreme court of North Carolina,term, 19..

..... }
v. } Appeal by.....
..... }

State of North Carolina,county.

Be it remembered, that on the..day of...., 19..... sued and prosecuted out of the superior court of.....county a summons in these words: (here copy the summons.)

And on the return day of the said summons, to-wit, on the Monday of....., 19.., at the court-house in....., before the Honorable....., judge, holding the superior court of said county,, sheriff of said county, made the following return on said summons: (here copy the return.) And thereupon the said....., by his attorney,, came and complained as follows: (Here copy the complaint.) And the said....., by his attorney....., came and pleaded as follows, to-wit: (Here copy the answer or other plea and other proceedings to the issue.) And thereafter, at a regular term of the superior court ofcounty, begun and held on the..day of...., 19.., with Honorable....., judge presiding, the following proceedings were had: Thereupon, this cause coming on for trial, the following jurors, to-wit (here name them) were chosen, tried, sworn and empaneled to try the issues joined between the parties, and thereupon, after the charge of the court, said jurors heretofore empaneled in this case for their verdict found the issues submitted to them as follows: (Here copy issues and verdict.) There was a motion by the defendant for a new trial and a venire de novo. The motion was refused. Whereupon the court entered the following judgment: (Here set out the judgment.) From the above judgment the defendant appealed to the supreme court. Notice of appeal given in open court. Appeal bond fixed at \$.... supersedeas bond fixed at \$..... Said bonds were duly executed and copies thereof are herewith sent. Statement of the case made out by the Honorable....., judge of said court: (Here copy statement of case on appeal.)

I,, clerk of the superior court of.....county, state of North Carolina, do hereby certify that the foregoing is a full, true and perfect transcript of the record in a civil action pending in said court, wherein..... is plaintiff and..... is defendant. In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at my office in....., on this..day of...., 19..

(C. S. C. Seal.)

Clerk of the Superior Court of.....county.

(Note.—The proceedings shall be set forth in the order of time in which they occurred, and the several processes or orders, etc., shall be arranged to follow each other in the order the same took place, as nearly as practicable. The pages of the transcript shall be numbered, and there shall be written on the margin of each a brief state-

ment of the subject-matter opposite to the same. On the first page of the transcript of the record there shall be an index thereto in the following or some equivalent form:

Summons, date	Page 1.
Complaint—First cause of action.....	" 2.
Complaint—Second cause of action.....	" 3.
Affidavit for attachment, etc.....	" 4.

and so on to the end.

No. 202.—Oath of constable.

I,, do solemnly swear (or affirm) that I will support the constitution of the United States; so help me, God.

I,, do further solemnly and sincerely swear (or affirm) that I will be faithful and bear true allegiance to the state of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the constitution of said state, not inconsistent with the constitution of the United States, to the best of my knowledge and ability; so help me, God.

I, A B, do further solemnly swear (or affirm) that I will well and truly serve the state of North Carolina in the office of constable; I will see and cause the peace of the state to be well and truly preserved and kept, according to my power; I will arrest all such persons, as in my sight, shall ride or go armed offensively, or shall commit or make any riot, affray or other breach of the peace; I will do my best endeavor, upon complaint to me made, to apprehend all felons and rioters, or persons riotously assembled; and if any such offenders shall make resistance with force, I will make hue and cry, and will pursue them according to law, and will faithfully and without delay, execute and return all lawful precepts to me directed. I will well and truly, according to my knowledge, power and ability, do and execute all other things belonging to the office of constable, so long as I shall continue in office; so help me, God.

No. 203.—Constable's bond.

North Carolina,county,township.

Know all men by these presents, that we,and....., are held and firmly bound unto the state of North Carolina in the sum of one thousand dollars, to the true and faithful payment whereof we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Signed and sealed this..day of...., 19..

The condition of this obligation is such, that whereas, the above bounden has been duly appointed (or elected) a constable for..... township in and for the county of....., for a term of... years, from and after the ..day of...., 19...: Now, therefore, if the said....shall diligently endeavor to collect all claims put into his hands for collection, and shall faithfully pay over all sums thereon received, either with or without suit, unto the persons to whom the same may be due, and shall from time to time, and at all times during his continuance in office, faithfully discharge his duties as constable according to law, then the above obligation is void, otherwise to remain in full force and virtue.

..... (Seal.)
..... (Seal.)
..... (Seal.)

Executed in the presence of.....

No. 204.—Record in case of contempt.

North Carolina,county,township.

In the matter of A B }
for contempt. } Before....., justice of the peace.

While trying an action between A B and C D, on the...day of...., 19.., at....., in.....township,county, one.....did unlawfully and contemptuously interrupt and disturb the proceedings of said trial (after being requested and warned by the undersigned to desist therefrom); and the said.....did at the said time and place use the following profane and contemptuous words: (Here state the words used). Whereupon the undersigned adjudged the said.....guilty of contempt of court, and to pay a fine of \$...., and to be imprisoned in the common jail of.....county five days and until he pays said fine, or is duly discharged from said imprisonment according to law.

This....day of....., 19..

....., Justice of the Peace.

No. 205.—Commitment in contempt.

North Carolina,county,township.

In the matter of A B }
for contempt. } Commitment.

State of North Carolina, to the sheriff or keeper of the
common jail of.....county—Greeting:

Whereas, on the....day of....., 19.., while trying an action entitled A B v. C D in said township, said county, the prisoner herewith sent you did act contemptuously and commit a contempt in the presence of my court then and there being held, whereupon the undersigned adjudged that the said.....be fined \$.... and also be imprisoned in the common jail of said county five days:

Now, therefore, you are commanded to receive the said.....into said jail and him safely to keep for the said term of five days, and until he pays the said fine, or is duly discharged according to law.

This...day of....., 19..

....., Justice of the Peace.

State of North Carolina, to....., of.....county—Greeting:

You are hereby commanded and required to execute the foregoing commitment by conveying and delivering into the custody of the sheriff or keeper of the common jail of.....county the body of.....

This ... day of, 19..., Justice of the Peace.

No. 206.—Coroner's oath.

I,, do solemnly swear (or affirm) that I will support the constitution of the United States; so help me, God.

I,, do further solemnly and sincerely swear (or affirm) that I will be faithful and bear true allegiance to the state of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the constitution of said state, not inconsistent with the constitution of the United States, to the best of my knowledge and ability; so help me, God.

I,, do further swear (or affirm) that I will well and truly execute the duties of the office of coroner according to the best of my skill and ability, according to law; so help me, God.

No. 207.—Affidavit before coroner for inquest.

North Carolina,county,township.

In the matter of } Affidavit.
A B, dec'd. }

C D, being duly sworn, says: That A B, late of said county, is dead; and the affiant has reason to believe that the said A B came to his death by the criminal act or default of some person or persons to the affiant unknown.
C D, Affiant.

Sworn and subscribed before me, this..day of...., 19..
....., Justice of the Peace.

No. 298.—Coroner's summons for a jury.

(Title as in No. 207.)

State of North Carolina, to any constable or other lawful officer of.....county—Greeting:

You are commanded forthwith to summon a jury of six good and lawful men to appear before the undersigned at the house of.....in said township at ... o'clock .. m., on the ... day of, 19.., to inquire into and do such things as shall be given them in charge in behalf of the state; and you are also commanded to be then and there yourself with this precept. Herein fail not.

This ..day of...., 19..

....., Coroner.

No. 209.—Oath of jury on inquest.

You, and each of you, swear (or affirm) that you will well and truly inquire, upon view of this dead body, when, how, and by what means this deceased person came to his death, and true presentment make of the means of the death and the person or persons (if any) causing the same, as may appear from the evidence brought before you; so help you, God.

No. 210.—Coroner's summons for witnesses.

(Title as in No. 207.)

State of North Carolina, to any constable or other lawful officer of.....county—Greeting:

You are hereby commanded to summon (here give names of witnesses), personally to appear before the undersigned coroner at the house of....., in.....township, in.....county, at..o'clock..m, the ..day of...., 19.., to give evidence concerning the death of.....; and you will also, at the same time and place, return this precept, with the manner of its execution.

This..day of...., 19..

....., Coroner.

No. 211.—Oath of witnesses on inquest.

You swear (or affirm) that the evidence you shall give this jury of inquest concerning the death of this deceased person shall be the truth, the whole truth, and nothing but the truth; so help you, God.

No. 212.—Record of coroner on inquest.

(Title as in No. 207.)

Be it remembered, that on the..day of...., 19.., I,....., coroner of said county, attended by a jury of good and lawful men, viz.: (here in-

sert names of jurors) by me summoned for the purpose, according to law, and after being by me duly sworn and empaneled, at....., intownship,county, did hold an inquest over the dead body of....., and after inquiring into the facts and circumstances of the death of the deceased, from a view of the corpse and a consideration of all testimony to be procured, the jury find as follows, to-wit: That (here set forth all the material facts as the jury find them; and let each juror sign his name under the verdict to the right side of the page, and the coroner on the left hand alone, as follows:

Inquest held and record	}	.....
signed in the presence of		.....
.....		(and so on:)
Coroner of....county.		

No. 213.—Recognizance of witnesses on inquest.

(Title as in No. 207.)

.....and.....acknowledge themselves indebted to the state of North Carolina in the sum of \$.... to be levied of their goods and chattels, lands and tenements; to be void nevertheless, if.....and..... shall make their personal appearance at our next superior court to be held for the county of....., at the court-house in..... on the..... Monday of..... next, then and there to give evidence in behalf of the state, touching and concerning the death of.....and not depart the same without leave.

Taken and acknowledged before me, this..day of...., 19..
....., Coroner.

No. 214.—Coroner's bond.

North Carolina,county.

Know all men by these presents, that we.....and.....and..... are held and firmly bound unto the state of North Carolina in the sum of \$2,000, to the true and faithful payment whereof we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Signed and sealed this..day of...., 19..

The condition of the above obligation is such that whereas, the above bounden.....has been duly elected coroner in and for the county of....., for a term of.....years from and after the..day of...., 19... Now, therefore, if the said.....shall, from time to time, and at all times, well and truly execute the said office of coroner, and duly and faithfully discharge and perform all and singular the duties of his said office during his continuance therein, according to law, then the above obligation is to be void; otherwise to remain in full force and effect.

Executed in the presence of	}	..... (Seal.)
.....		..... (Seal.)
.....		..... (Seal.)

Approved, this .. day of....., 19..., by the board of commissioners of county., Clerk to Board of Commissioners.

The execution of the foregoing bond was this day duly acknowledged before me by and duly proven, as to, by the oath and examination of, the subscribing witness thereto. Let the same, with the certificates, be registered.

This .. day of, 19...

Clerk (or Chairman) of Board of Commissioners of County.

Filed, etc.

No. 215.—Certificate of incorporation.

Certificate of incorporation of company.

This is to certify that we, the undersigned, do hereby associate ourselves into a corporation under and by virtue of the laws of the state of North Carolina, as contained in chapter 21 of the Revisal of 1905, entitled "Corporations," and do severally agree to take the number of shares of capital stock in the said corporation set opposite our respective names, and to that end do hereby set forth:

1. The name of this corporation is company.

2. The location of the principal office of the corporation in this state is at No....., street, in the of, county of; but it may have one or more branch offices and places of business out of the state of North Carolina, as well as in said state.

3. The objects for which this corporation is formed are as follows:

(a) (b) (c)

And in order properly to prosecute the objects and purposes above set forth, the corporation shall have full power and authority to purchase, lease and otherwise acquire, hold, mortgage, convey, and otherwise dispose of all kinds of property, both real and personal, both in this state and in all other states, territories and dependencies of the United States; to purchase the business, good-will and all other property of any individual, firm or corporation as a going concern and to assume all its debts, contracts and obligations, provided said business is authorized by the powers herein contained; to construct, equip and maintain buildings, works, factories and plants; to install, maintain and operate all kinds of machinery and appliances; to operate same by hand, steam, water, electric or other motive power, and generally to perform all acts which may be deemed necessary or expedient for the proper and successful prosecution of the objects and purposes for which the corporation is created.

4. The total authorized capital stock of this corporation is..... (\$.....) dollars, divided into shares of the par value of (\$.....) dollars each; but the corporation may organize and begin business when (\$.....) dollars of the capital stock, composed of shares, shall have been subscribed for.

5. The names and postoffice addresses of the subscribers for stock, and the number of shares subscribed for by each, the aggregate of which being the amount of capital stock with which the company will commence business, are as follows:

Name.	Postoffice address.	No. of shares.
.....
.....
.....

6. The period of existence of this corporation is limited to years.

7. The board of directors of this corporation shall have power, by vote of a majority of all the directors, and without the assent or vote of the stockholders, to make, alter, amend and rescind the by-laws of this corporation.

In testimony whereof, we have hereunto set our hands and affixed our seals, this the .. day of, A. D. 19...

..... (Seal)
 (Seal)
 (Seal)

Signed, sealed and delivered in the presence of
, Witness.

State of, county of—ss.

This is to certify that on this ... day of, A. D. 19..., before me, a, personally appeared, who, I am satisfied, are the

persons named in and who executed the foregoing certificate of incorporation of company, and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

In testimony whereof, I have hereunto set my hand and affixed my official seal, this the ... day of, A. D. 19...

(L. S.)

No. 215a.—Proxy for stockholders' meeting.

North Carolina, county.

Know all men by these presents, that I, the undersigned, being the owner of shares of the capital stock of the company, a corporation, do hereby constitute and appoint my true and lawful attorney, in my name, place and stead, to vote upon the stock owned by me or standing in my name as my proxy, at the meeting of the stockholders of the said corporation to be held at, on the ... day of, 19.., at o'clock ... m., or on such other day as the meeting may be thereafter held by adjournment or otherwise, according to the number of votes I am now or may then be entitled to cast; hereby granting my said attorney full power and authority to act for me and in my name at the said meeting or meetings in (voting for directors of the said company) and in the transaction of any business that may come before the meeting, as fully as I could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or substitute may do in my name, place and stead.

In witness whereof, I have hereunto set my hand and seal, this ... day of, 19... .. (Seal.)

Witness:.....

North Carolina, county.

I,, a notary public in and for said county and state, duly commissioned, qualified and acting, do hereby certify that, personally known to me and known by me to be the person named in and whose name is signed to the foregoing instrument of writing, personally appeared before me this day and acknowledged the due execution of the foregoing instrument of writing for the purposes therein expressed.

In witness whereof, I have hereunto set my hand and official seal, this ... day of, 19... ..

My commission expires the .. day of, 19... Notary Public.
(Notary public seal here.)

No. 216.—Oath of county commissioners.

I,, do solemnly swear (or affirm) that I will support the constitution of the United States; so help me, God.

I,, do further solemnly and sincerely swear (or affirm) that I will be faithful and bear true allegiance to the state of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the constitution of said state, not inconsistent with the constitution of the United States, to the best of my knowledge and ability; so help me, God.

I,, do further swear (or affirm) that I will well and truly execute the duties of the office of county commissioner according to the best of my skill and ability, according to law. So help me, God.

No. 217.—Bond of county treasurer.

North Carolina, county.

Know all men by these presents, that the undersigned are held and firmly bound unto the state of North Carolina in the sum of \$., to the payment of which, well and truly to be made, we bind ourselves, jointly and severally, our heirs, executors and administrators, firmly by these presents:

Signed and sealed, this .. day of, 19...

The condition of the above obligation is such, that whereas, the above bounden has been duly elected county treasurer for the county of, for the term of two years from the .. day of, 19...: Now, if the said shall, during his term of office, well and faithfully execute the duties of his office and pay, according to law, and on the warrant of the chairman of the board of county commissioners, all moneys which shall come into his hands as treasurer, and render a just and true account thereof to the board when required by law, or by said board of county commissioners, then this obligation to be null and void; otherwise to remain in full force and effect.

..... (Seal)

..... (Seal)

..... (Seal)

Witness:

No. 218.—Oath of county treasurer.

I,, do solemnly swear (or affirm) that I will support the constitution of the United States; so help me, God.

I,, do further solemnly and sincerely swear (or affirm) that I will be faithful and bear true allegiance to the state of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the constitution of said state, not inconsistent with the constitution of the United States, to the best of my knowledge and ability; so help me, God.

I,, do further solemnly swear (or affirm) that according to the best of my skill and ability I will execute impartially the office of treasurer for the county of in all things according to law; that I will duly and faithfully account for all public moneys that may come into my hands, and will not, directly or indirectly, apply the same, or any part thereof to any other use than by law directed; so help me, God.

No. 219.—Bond of manager of workhouse.

North Carolina, county.

Know all men by these presents, that we, and and, are held and firmly bound unto the state of North Carolina in the sum of \$., to the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, firmly by these presents.

Signed and sealed, this .. day of, 19...

The condition of the above obligation is such, that whereas, the above bounden has been appointed by the board of commissioners of county, manager of the workhouse or house of correction of said county: Now, if the said shall well and faithfully discharge the duties of said office of manager as prescribed by law, and truly account for and pay over to the persons directed, all moneys which may come into his hands by virtue of his said office, then the above obligation is to be void; otherwise to remain in full force and effect.

..... (Seal)

..... (Seal)

..... (Seal)

Witness:

No. 220.—Warranty Deed.

North Carolina, county.

This deed, made this .. day of, 19.., by, of county, and state of, of the first part, and of county, and state of, of the second part: Witnesseth, that said, in consideration of \$... to him paid by, the receipt of which is hereby acknowledged, has bargained and sold, and by these presents doth grant, bargain, sell and convey to said and his heirs and assigns, a certain tract or parcel of land in township, county, state of, adjoining the lands of and others, and bounded as follows, viz.: (Here describe land.)

To have and to hold the aforesaid tract or parcel of land and all privileges and appurtenances thereunto belonging or in anywise appertaining, to the said, his heirs and assigns, to their only use and behoof in fee simple forever.

And the said does for himself and his heirs, executors and administrators, covenant to and with the said, his executors, administrators, heirs and assigns, that he is seized of said premises in fee, and has a right to convey the same in fee simple; that the same are free and clear from all incumbrances, and that he does forever warrant and will forever defend the title to the same against the lawful claims of all persons whomsoever.

In testimony whereof, the said has hereunto set his hand and seal, the day and year first above written. (Seal)

Attest:.....

Note.—The use of the following covenants and warranty is suggested: "And the said party of the first part, for himself and his heirs, executors and administrators, hereby covenants to and with the said party of the second part and his executors, administrators, heirs and assigns as follows: (1) That he is seized of said premises in fee; (2) that he has full and perfect right and power to convey the same in fee simple; (3) that the same are free and clear of all encumbrances; (4) that the said party of the second part and his heirs and assigns shall quietly and peaceably enjoy the possession of the said land forever; (5) that the said party of the first part and his heirs, executors and administrators shall and will at any and all times hereafter, upon the demand of the said party of the second part or his heirs or assigns, make, execute and deliver all such other and further deeds and conveyances and do and perform any and all such other and further acts and things as may be necessary or proper to convey and assure unto the said party of the second part and his heirs and assigns a good, sure and indefeasible title to the said land; and (6) that the said party of the first part does hereby forever warrant and will forever defend the title to the said land against the lawful claims of all persons whomsoever."

No. 221.—Probate of clerk.

North Carolina, county.

I,, clerk of the superior court of county, do hereby certify that and, his wife, personally appeared before me this day and acknowledged the due execution of the annexed deed of conveyance; and the said, wife of, being by me privately examined, separate and apart from her said husband, touching her voluntary execution of the same, doth state that she signed the same freely and voluntarily, without fear or compulsion of her said husband or any other person, and that she doth still voluntarily assent thereto.

(Let the instrument, with this certificate, be registered.)

Witness my hand (and official seal), this .. day of, 19...

.....
Clerk of the Superior Court of County.

Note.—Where the land lies in one county only, either the order for registration or the words "and official seal" should be omitted. The clerk only orders to registration in his own county, and does not need to use a seal in his own county.

No. 222.—Certificate of justice as to acknowledgment and private examination.

North Carolina, county.

I,, justice of the peace, do hereby certify that and, his wife, personally appeared before me this day and acknowledged the due execution of the within deed of conveyance; and the said, wife of, being by me privately examined, separate and apart from her said husband, touching her voluntary execution of the same, doth state that she signed the same freely and voluntarily, without fear or compulsion of her said husband or any other person, and that she doth still voluntarily assent thereto.

Witness my hand, this .. day of, 19...

....., Justice of the Peace.

Note.—It is suggested that in all these forms of certificates of acknowledgment, after the names of the persons making the acknowledgment, the following words be inserted,—“personally known to me and known by me to be the persons named in and whose names are signed to the foregoing instrument of writing.”

No. 223.—Probate of clerk.

North Carolina, county.

The foregoing certificate of, a justice of the peace of county, is adjudged to be correct. Let the instrument and the certificates be registered.

Witness my hand, this .. day of, 19...

....., Clerk Superior Court.

No. 224.—Acknowledgment of grantor.

North Carolina, county.

I,, a, in and for said county and state, duly elected (or appointed) (or commissioned), qualified and acting, do hereby certify that, personally known to me and known by me to be the person named in and whose name is signed to the foregoing instrument of writing, personally appeared before me this day and acknowledged the due execution of the foregoing instrument of writing for the purposes therein expressed.

Witness my hand (and official seal), this .. day of, 19...

.....

No. 225.—Acknowledgment of grantor.

North Carolina, county.

I,, do hereby certify that personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand (and official seal), this the .. day of, 19...
(Official seal.)

Note.—A notary public must always affix his seal to his certificate and state after his signature the date of the expiration of his commission.

No. 226.—Certificate of register.

North Carolina, county.

Filed for registration at .. o'clock .. m., this .. day of, 19... and registered in the office of the register of deeds for county, in book .., page .., the .. day of, 19...

....., Register of Deeds for County.

No. 227.—Certificate of clerk to justice's certificate.

North Carolina, county.

I, clerk of the superior court of county, do hereby certify that was at the time of signing the foregoing (or annexed) certificate an acting justice of the peace in and for the county of and state of, and that his signature thereto is in his own proper handwriting.

In witness whereof, I hereunto set my hand and official seal, this .. day of, 19...

(L. S.) Clerk of the Superior Court of County.

No. 228.—Probate of a deed acknowledged in another county.

North Carolina, county.

The foregoing instrument, also the certificate of, a justice of the peace of county, and the certificate of, the clerk of the superior court for county, and his official seal attached, having been exhibited before me, the same are adjudged to be correct. Let the instrument, with the certificates, be registered.

This ... day of, 19...

Clerk of the Superior Court of County.

No. 229.—Commission to take acknowledgment.

North Carolina, county.

To, greeting:

Know all men by these presents, that we, reposing special trust and confidence in your integrity, do authorize and empower you to take the acknowledgment of A B and his wife, C D, both of county, state of, to a certain deed made to E F, of county, state of, conveying certain lands situate in county, North Carolina; and we do further authorize and direct you to take the privy examination of the said C D, wife of the said A B, to the aforesaid deed, separate and apart from her said husband; and you will cause the acknowledgment and examination, taken by you as herein directed, to be certified, under your hand and seal, to the undersigned forthwith, and appended to the said deed, to the end that the same may be proved and recorded.

Witness my hand and official seal, this .. day of, 19...

....., Clerk Superior Court.

No. 229a.—Deed by a corporation.

North Carolina, county.

This deed, made this ... day of, 19..., by, a corporation created, organized and existing under and by virtue of the laws of the state of North Carolina, party of the first part, to, of the county of, state of, party of the second part, witnesseth:

That for and in consideration of the sum of \$... paid by the party of the second part to the party of the first part, the receipt of which is hereby acknowledged, the said party of the first part has given, granted, bargained and sold, and by these presents does give, grant, bargain, sell and convey unto the said party of the second part, and his heirs and assigns, the following tract or parcel of land, lying and being in township, county, North Carolina, adjoining the lands of and others, and more particularly described as follows, to-wit: Bounded by a line beginning, etc. (here set out description by metes and bounds), containing acres, more or less.

To have and to hold the said land and premises, together with all

the privileges and appurtenances thereunto belonging, or in anywise appertaining, unto him, the said party of the second part and his heirs and assigns in fee simple forever.

And the said party of the first part, for itself and its successors and assigns, hereby covenants to and with said party of the second part and his heirs, executors, administrators and assigns, that it is seized of said premises in fee simple, and that it has a good and lawful right to convey the same in fee simple, that the same are free from any and all encumbrances, and that it does hereby forever warrant and will forever defend the title thereto against the lawful claims of any and all persons whomsoever.

In witness whereof, said party of the first part has caused these presents to be signed in its name by its president and its corporate seal to be hereto affixed and attested by its secretary, all by an order of its board of directors, this the day and year first above written.

(Corporate seal here.)

..... Company,
By, President.

Attest:, Secretary.

Note.—Where the deed is to be executed in any other manner than by the president and secretary of the corporation the above form can be easily varied to suit the circumstances by changing only the last paragraph of the deed and the manner of signing the same so as to conform to the provisions of the statute.

No. 230.—Probate of deed of corporation executed by president and secretary.

North Carolina, county.

This .. day of, A. D. 19.., personally came before me,, clerk of the superior court of county,, who, being by me duly sworn, says that he knows the common seal of the and is acquainted with, who is president of said corporation, and that he, the said, is the secretary of the said corporation and saw the said president sign the foregoing (or annexed) instrument, and saw the said common seal of said corporation affixed to said instrument by said president, (or that he, the said, secretary as aforesaid, affixed said seal to said instrument), and that he, the said, signed his name in attestation of the execution of said instrument in the presence of said president of said corporation.

Let the instrument, with this certificate, be registered.

Witness my hand, this said ... day of, 19...

.....
Clerk of the Superior Court of County.

No. 231.—Probate of deed of corporation executed by its president and secretary.

North Carolina, county.

This is to certify that on the ... day of, 19.., before me,, personally came, with whom I am personally acquainted, who, being by me duly sworn, says that is the president, and that is the secretary of the, the corporation described in, and which executed the foregoing instrument; that he knows the common seal of the said corporation; that the seal affixed to the foregoing instrument is said common seal, and the name of the corporation was subscribed thereto by the said president, and that the said president and secretary subscribed their names thereto, and said common seal was affixed, all by order of the board of directors of said corporation, and that the said instrument is the act and deed of the said corporation.

Witness my hand (and official seal), this ... day of, 19...

..... (Title, etc.)

No. 232.—Probate of deed of corporation executed by its president and secretary.

North Carolina, county.

This ... day of, 19.., before me, personally came, who, being by me duly sworn, says that he is president of the company, and that the seal affixed to the foregoing (or annexed) instrument in writing is the corporate seal of the said company, and that said writing was signed and sealed by him in behalf of the said corporation by its authority duly given. And the said acknowledged the said writing to be the act and deed of the said corporation.

Witness my hand (and official seal), this ... day of, 19..

.....(Title, etc.)

No. 233.—Probate of deed of corporation executed by president and two members of corporation.

North Carolina, county.

This .. day of, A. D. 19.., personally came before me,, clerk of the superior court of county,, who being by me duly sworn says that he knows the common seal of the and is also acquainted with, who is the president (or presiding member or trustee) of said corporation, and also with and, two other members of said corporation; and that he, the said, saw the said, president as aforesaid (or presiding member or trustee as aforesaid) and the two said other members of said corporation sign the said instrument, and saw the said president (or presiding member or trustee) affix the said common seal of said corporation thereto, and that he, the said subscribing witness, signed his name as such subscribing witness thereto in their presence.

Let the instrument, with this certificate, be registered.

Witness my hand, this said ... day of, 19..

.....
Clerk of the Superior Court of County.

No. 233a.—Proof of instrument of writing by proof of handwriting of subscribing witness or maker.

North Carolina, county.

The execution of the foregoing instrument of writing by, the grantor therein named, was this day duly proven before me by the oath and examination of as to the handwriting of, the subscribing witness thereto, (or, of, the maker thereof) as follows:

North Carolina, county.

....., being duly sworn, deposes and says that, the subscribing witness to the foregoing instrument of writing, is dead (or, out of the state or of unsound mind) and that affiant is well acquainted with the handwriting of the said, (or, of, maker of the said instrument of writing) having often seen him write, and that the name of the said subscribed to said instrument of writing is in the genuine handwriting of the said

Subscribed and sworn to before me, this ... day of, 19..

.....
Clerk of the Superior Court of County.

Therefore let the said instrument of writing, with this certificate, be registered.

Witness my hand, this ... day of, 19..

.....
Clerk of the Superior Court of County.

No. 233b.—Proof of instrument of writing having no subscribing witness by proof of handwriting of maker.

North Carolina, county.

The execution of the foregoing instrument of writing by, the grantor therein named, was this day duly proven before me by the oath and examination of as to the handwriting of, the maker thereof, as follows:

North Carolina, county.

....., being duly sworn, deposes and says that he is well acquainted with the handwriting of, maker of the foregoing instrument of writing, having often seen him write, and that the name of the said subscribed to said instrument of writing is in the genuine handwriting of the said

Subscribed and sworn to before me, this ... day of, 19...

.....
Clerk of the Superior Court of County.

Therefore let the said instrument of writing, with this certificate, be registered.

Witness my hand, this ... day of, 19...

.....
Clerk of the Superior Court of County.

No. 233c.—Proof of instrument to which the clerk is a party or in which he is interested.

North Carolina, county.

I,, a justice of the peace in and for said county and state, duly elected (or appointed), qualified and acting, do hereby certify that, the grantor named in the foregoing (or attached) instrument of writing, personally appeared before me this day and acknowledged the due execution of the said instrument of writing for the purposes therein expressed.

Witness my hand, this ... day of, 19...

....., Justice of the Peace.

North Carolina, county.

I,, clerk of the superior court of county, do hereby certify that was at the date of the foregoing certificate a duly qualified and acting justice of the peace in and for county, North Carolina, and that the name of the said, J. P., subscribed to the said certificate is in the genuine and proper handwriting of the said; and hereupon the foregoing certificate of said, justice of the peace of county, North Carolina, is adjudged to be genuine, sufficient and correct. Let the instrument of writing, with the certificates, be registered.

Witness my hand and official seal, this ... day of, 19...

.....
Clerk of the Superior Court of County.

Note.—When the clerk is a party to or interested in the instrument which it is desired to prove for registration the foregoing procedure may be had or the instrument may be acknowledged before, and probated by, any judge of the superior court, or any justice of the supreme court, or the deputy of the said clerk, or the clerk of the superior court of some other county of this state. In any of these cases but the first mentioned the usual forms would be used. See sections 1743 and 1747 *infra*.

No. 234.—Bond to make title.

North Carolina, county.

Know all men by these presents, that we,, are held and firmly bound unto in the sum of \$...., to the payment whereof we bind our heirs, executors, administrators and assigns, firmly by these presents.

Signed and sealed, this ... day of, 19...

The condition of this obligation is such, that whereas the said has contracted and agreed to sell and convey to the said and heirs, a certain tract of land in said county, adjoining the lands of and others, bounded as follows, viz.: (here describe land), containing acres, more or less, on receiving the sum of \$...., being the purchase money agreed on between the parties, secured by a bond bearing even date with these presents, to be due on the .. day of, 19....

Now, if the said..... on receiving the said purchase money, together with the interest thereon accrued, provided the same be tendered within three months after the bond falls due, shall well and truly at own proper costs and charges, make and execute to the said.....and his heirs, a good and sufficient deed of conveyance with warranty and full covenants, to convey and assure unto the said and his heirs, a good, sure and indefeasible estate of inheritance in and to said tract of land, with the privileges and appurtenances thereunto belonging, free and discharged from any and all encumbrances whatever, then this obligation to be void; otherwise to remain in full force and effect.

Witness our hands and seals, this..day of....., 19..

Attest: (Seal.)
 (Seal.)

No. 235.—Mortgage deed, with insurance clause.

North Carolina, county.

This mortgage, made this..day of...., A. D. 19.., by.....and....., his wife, of.....county and state of....., parties of the first part, to....., of.....county, and state of....., party of the second part, Witnesseth:

That whereas, said parties of the first part are justly indebted to said party of the second part in the sum of \$...., as evidenced by a bond of even date herewith, due and payable on the..day of...., 19.., and bearing interest from date at the rate of six per cent per annum payable annually; and whereas, said parties of the first part are anxious to secure the payment of said bond at maturity:

Now, therefore, in consideration of the premises, and for the purpose aforesaid, and for the sum of ten dollars to the parties of the first part paid by the party of the second part, the receipt of which is hereby acknowledged, said parties of the first part have given, granted, bargained, sold, aliened, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, convey and confirm unto said party of the second part, his heirs and assigns forever, a certain piece or tract of land lying and being in.....county, state aforesaid, in..... township, and described and defined as follows, to-wit: (Here describe land). To have and to hold said land and premises, with all the privileges and appurtenances thereunto belonging or in any wise appertaining unto the said party of the second part, his heirs and assigns forever. And said parties of the first part, for themselves, their heirs, executors and administrators, do covenant to and with said party of the second part, and his heirs and assigns, that they are the owners and are seized of said premises in fee-simple; that they have the right to convey the same; that the same are free from any incumbrance whatsoever, and that they will forever warrant and defend the title to the same from the lawful claims of all persons whomsoever.

But this deed is made on this special trust: That if said parties of the first part shall well and truly pay, or cause to be paid, to said party of the second part or his legal representatives, the bond hereinbefore described at its maturity, then this deed to be null and void.

But if default shall be made in the payment of said bond or the interest on the same, or any part of either at maturity, then and in that event it shall be lawful for (and the duty of) said party of the second

part or his assigns to sell said land hereinbefore described, to the highest bidder for cash, at the court-house door in.....county, first advertising the same for thirty days in some newspaper published incounty, and by posting a notice at some conspicuous place at the court-house door and three other public places in said.....county for thirty days immediately preceding the sale, and convey the same to the purchaser in fee-simple, and out of the moneys arising from said sale to pay said bond and interest on the same, together with costs of sale, and pay the surplus remaining, if any, to said parties of the first part, or their legal representatives.

It is understood and agreed between the parties to this deed, that the parties of the first part shall keep the buildings on the said premises insured in some reliable insurance company having an agency in the said county of.....in the sum of \$...., and if any loss should occur, the same shall be payable to the party of the second part, to be applied, as far as it may extend, to the satisfaction of this mortgage. And if the parties of the first part shall fail to insure said buildings for ten hours the party of the second part shall be at liberty to effect such insurance, and the amount expended for insurance by said party of the second part shall be deemed principal money bearing..per cent interest per annum, and be payable when the next installment of interest becomes due and the payment thereof shall be secured by the lien of this indenture.

In testimony whereof, said parties of the first part have hereto subscribed their names and affixed their several seals.

..... (Seal.)
 (Seal.)

Signed, sealed and delivered in the
 presence of.....

No. 236.—Mortgage deed.

North Carolina, county.

This conveyance, made this..day of...., 19.., by....., of the county of....., state of....., of the first part, to....., of the county of....., state of....., of the second part.

Witnesseth, That for and in consideration of the sum of one dollar to the part.. of the first part paid by the part..of the second part, the receipt whereof is hereby acknowledged, the said....., part.. of the first part, ha..given, granted, bargained and sold, and by these presents do..give, grant, bargain, sell and convey unto the said....., part..of the second part, ...heirs and assigns forever, all.... tract.. or parcel.. of land lying and being in.....county, North Carolina, intownship, and adjoining the lands of..... and others, and more fully described as follows: (Here describe the land by metes and bounds).

To have and to hold said land and premises, together with all the rights, tenements, hereditaments, and appurtenances thereunto in anywise appertaining to.....the said heirs and assigns, upon the following uses and trusts, namely: Whereas, the said.....of the first part.....indebted to..... with interest thereon from date, till paid, at the rate of six per centum per annum, payable semi-annually on the...days of.....and..... in each year, and should any installment of interest not be paid as it accrues, such installment shall thereafter bear interest, till paid, at the rate aforesaid.

Now, therefore, if the said shall fail or neglect to pay the taxes which may from time to time be assessed on the above described property when due and payable pursuant to the law, or shall fail or neglect to pay the interest on said bond..as it accrues and becomes due, or both principal and interest at the maturity of....said bond..

or any part of either the principal or interest when due and payable, then the whole of said....shall be considered due and payable, and, upon the application of any party rightfully in possession of....said bond..the said part..of the second part.... heirs, legal representatives or assigns are hereby authorized and fully empowered to expose said land at public sale to the highest bidder for cash at..... in said county of..... after making public advertisement of the time and place of sale for 30 days in some newspaper published in the said county where the said land or some portion thereof is situate, and also by posting notices at some conspicuous place at the court-house door and three other public places in said county for thirty days immediately preceding the sale, and convey the land to the purchaser in fee-simple, and after paying the expenses of making such sale, apply the proceeds of sale to the discharge of whatever may remain unpaid on said bond., and all interest thereon accrued and unpaid, and pay the surplus, if any, to the part..of the first part, heirs, legal representatives or assigns.

And the part..of the first part covenant.. with the part.. of the second part as follows: That the owner.. and lawfully seized of said premises in fee-simple; that good right to convey the same; that the same are free from all incumbrances whatever, and that will forever defend, and do.. hereby forever warrant the title herein conveyed against all lawful claims.

And it is stipulated and agreed, that the part.. of the first part shall keep the buildings on said premises insured in some reliable insurance company having an agent and doing business incounty in the sum ofdollars, the loss, if any, payable to to be applied, so far as it may extend, to the satisfaction of said bond.; and if the said part.. of the first part shall fail to insure said buildings, and the same shall remain uninsured for six hours, the part.. of the second part shall be at liberty to effect such insurance, and the money so expended shall be deemed principal money, bear six per cent interest, and be payable at the same time with the next installment of interest thereafter becoming due.

The premises may be sold in mass or in lots, as the part.. of the second part may deem best, and the expenses of dividing the same into lots and of making all necessary surveys and plats shall be considered as a part of the cost and expenses of sale.

Provided nevertheless, that if said part.. of the first part, heirs, executors, administrators or assigns, shall pay off as aforesaid said bond.. and interest, and discharge fully the trusts herein declared, then this conveyance to be null and void; otherwise to remain in full force and effect.

In testimony whereof, the said part.. of the first part ha.. hereunto set hand.. and seal.. the day and year first above written.

..... (Seal.)
..... (Seal.)

No. 237.—Deed of trust with three parties.

North Carolina, county.

This indenture, made and entered into this..day of...., A. D. 19..., by and between and his wife, of county aforesaid, parties of the first part, and of county in said state, party of the second part, and of county and state aforesaid, party of the third part:

Witnesseth, for that whereas, the said is indebted to the said, in the sum of \$...., for which the said has executed

and delivered to said, as aforesaid, his bond of even date with this deed, in said sum of \$...., payable on the ..day of...., 19.., with interest thereon from date until paid, at the rate of six per centum per annum, payable semi-annually on the..days of.... and...., hereafter, and it has been agreed that the payment of said debt shall be secured by the conveyance of the land hereinafter described:

Now, therefore, in consideration of the premises and for the purpose aforesaid, and for the sum of one dollar to the party of the first part paid by the party of the second part aforesaid, said and wife (the latter becoming a party to this deed to convey and pass all right of dower and homestead in said land and bar her claim thereto), have bargained, sold, given, granted and conveyed, and by these presents do bargain, sell, give, grant and convey to said, his heirs and assigns, a certain tract of land lying and being in county aforesaid, and more particularly described and defined as follows: (Here describe land).

To have and to hold said land and premises with all the rights, privileges and appurtenances thereunto belonging, to him, said, his heirs and assigns, upon the trusts and for the uses and purposes following, and none other, that is to say:

If the said shall fail or neglect to pay the interest on said bond as the same may hereafter become due, or both principal and interest at maturity of the bond or any part of either, then, on application of said, his assignee or any other person who may be entitled to the moneys due thereon, it shall be lawful for, and the duty of the said to advertise a sale of the said lands in one or more papers published in said county for a time not less than thirty days, and to post a notice of said sale at some conspicuous place at the court-house door and at three other public places in said county for at least thirty days immediately preceding the sale, therein appointing a day and place of sale, and at such time and place to expose said lands at public sale to the highest bidder for cash, and to convey the same to the purchaser in fee-simple and out of the moneys arising from the said sale to pay said debt and interest and the costs and expenses of sale, first retaining out of the proceeds of such sale the usual compensation of five per cent. received by trustees for making such a sale, and pay the surplus, if any remain, to said.....

And it is stipulated and agreed, that if the said shall pay off said bond and interest and discharge fully the trusts herein declared, this deed shall be null and void; otherwise to be in full force and virtue. And the said parties of the first part, for themselves, their heirs, executors and administrators, covenant with the parties of the second and third parts hereto, their heirs and assigns, that they are seized in fee-simple of the above described lands, that the same are free from all incumbrances, that they have perfect right and power to make this conveyance, and that they will forever warrant and defend the title to the said lands against all lawful claims.

And it is expressly agreed by and between the parties to these presents, that the said parties of the first part shall and will keep the buildings erected, and to be erected, upon the lands above conveyed, insured against loss or damage by fire in some reliable insurance company doing business in the state of North Carolina, in at least the sum ofdollars, for the benefit of the said party of the second part; and in default thereof it shall be lawful for the said to effect such insurance, and the premium or premiums paid for effecting the same shall be a lien on the said premises herein conveyed, and to the amount of said bond or obligation and secured by these presents.

In testimony whereof, the said and wife do hereto subscribe their respective names and affix their several seals.

..... (Seal.)
 (Seal.)

No. 238.—Trustee's deed for sale of land.

North Carolina, county.

This deed made this ..day of...., 19.., by, trustee, party of the first part, to of county, state of, party of the second part, Witnesseth:

That whereas, on the ..day of...., executed and delivered unto the said....., trustee, a certain deed of trust, which is recorded in the office of the register of deeds forcounty, in book, page;

And whereas, there was default in the payment of the indebtedness thereby secured as therein provided, and under and by virtue of the authority conferred by the said deed of trust, and in accordance with the terms and stipulations of the same, and after due advertisement as in said deed of trust prescribed and by law provided, the said, trustee, did, on the ..day of...., 19.., at, expose to public sale the lands hereinafter described where and when became the last and highest bidder for the same at the price of dollars;

And whereas, the said purchase price has been fully paid or arranged to be paid, as in said deed of trust prescribed;

Now, therefore, in consideration of the premises and of the sum of dollars paid to the said party of the first party by the said party of the second part, the receipt of which is hereby acknowledged, and under and by virtue of the power and authority by the said deed of trust conferred, the said, trustee, as aforesaid, does hereby bargain, sell and convey unto the said, his heirs and assigns, a certain parcel or tract or lot of land lying and being in county, state of, and defined and described as follows, to-wit: Lying and being in township, adjoining the lands of and others, and bounded by a line described as follows, namely: (Here give description of land by metes and bounds).

To have and to hold said land and premises and all privileges and appurtenances thereto belonging unto the said, his heirs and assigns forever, in as full and ample manner as the said, trustee, as aforesaid, is authorized and empowered to convey the same.

In witness whereof, the said, trustee, as aforesaid, has hereunto set his hand and affixed his seal the day and year first above written.

....., Trustee. (Seal.)

Note.—The foregoing form can easily be amended so as to be used for a mortgagee who makes deed after foreclosure sale.—Ed.

No. 239.—Deed to a trustee.

North Carolina, county.

This indenture, made this ..day of...., 19.., between A B of the first part, and C D of the second part, both of the county and state aforesaid: Witnesseth, that whereas, said A B is desirous of making provision for his.. S B, now of the age of ..years, against future contingencies and for the maintenance and support of the said S B; and whereas, the said A B is desirous that the said S B should enjoy the proceeds, rents and income of the real estate, herein more particularly described, during the natural life of the said S B, free from the liabilities or interference of any one whatsoever:

Now, therefore, in consideration of the premises and the sum of one dollar to him paid by the said party of the second part, the receipt whereof is hereby acknowledged, the said party of the first part has bargained and sold, and by these presents doth bargain, sell and convey unto the said party of the second part all that certain lot of land situate in the town of, bounded and described as follows: (here insert description of the premises). To have and to hold the above-mentioned and described premises, together with the appurtenances,

unto the said C D (the trustee), his successors and assigns, in trust and upon the uses, trusts, and purposes hereinafter mentioned, viz:

First. To lease the same, and to take, collect, and receive the rents, issues and profits thereof; and out of the same to keep the said premises in good order and repair, and properly insured, and pay all taxes, assessments, and charges that may be imposed thereon.

Second. To pay the residue of such rents, issues, and income to the said S B, upon her (or his) sole and separate receipt, to the intent and purpose that she (or he) may enjoy, possess, and have the same, free from the interference, or liability of any person whatsoever during the term of her (or his) natural life.

Third. To convey the said land and premises to such person or persons as she (or he), the said S B, by her last will and testament, or by an instrument in the nature of a last will and testament, subscribed by her in the presence of three credible witnesses, notwithstanding her coverture, may direct and appoint.

And the said A B hereby declares that upon the decease of the said S B the said trusts hereby created shall cease and determine, and the land and premises above described shall belong in fee-simple absolute to the heirs at law of the said S B, if any should be living, and in case there are no said heirs at law living at the death of the said S B, the premises herein conveyed shall revert to the grantor or to his heirs at law.

And the said party of the second part doth hereby signify his acceptance of this trust, and doth hereby covenant and agree to and with the said party of the first part faithfully to discharge and execute the same, according to the true intent and meaning of these presents.

In witness whereof the parties have hereunto set their hands and seals the day and year first above written.

Witness: (Seal.)
 (Seal.)

No. 240.—Quitclaim deed.

North Carolina, county.

This indenture, made this ..day of .., 19.., between .., of the county of .., and state of .., on the one part, and .., of the county of .., and state of .., on the other part—

Witnesseth: That whereas, on or about the ..day of .., 19.., the said .., for and in consideration of the sum of ...dollars, to him in hand paid by the said .., did sell and convey to the said .., a certain tract of land in the county of .., state of .., on the waters of .., adjoining the lands of .. and others, and bounded as follows: (Here describe land).

And whereas, the said tract of land was by the said .. conveyed and assured to the said .., his heirs and assigns, by a certain deed of absolute conveyance, with full covenants of warranty, duly executed, which conveyance is now supposed to be lost, never having been registered according to law;

Now, therefore, this indenture witnesseth, that for and in consideration of the premises, together with the further consideration of one dollar to him in hand paid by the said .., the said .., hath granted, released, confirmed and quitclaimed, and by these presents doth grant, release, confirm and quitclaim unto the said .., his heirs and assigns, all his right, claim, interest and property in and to the said tract of land above described; to have and to hold, together with all the appurtenances thereto belonging, or in any wise appertaining, to him, the said .., his heirs and assigns, free from any encumbrance.

In testimony whereof, the said .. has hereunto set his hand and seal the date first above written.

Witness: (Seal.)

No. 241.—Timber deed—with option clause.

North Carolina, county.

This conveyance, made this the...day of...., 19..., by and between, of the county of, state of North Carolina, part.. of the first part, and, of the county of, said state, part.. of the second part, Witnesseth:

That for and in consideration of the sum of one dollar to paid by said part.. of the second part, the receipt of which is hereby acknowledged, and the further payments to be made as hereinafter set forth, the said part.. of the first part ha.. bargained and sold and do.. hereby convey to said part.. of the second part, ..h.. heirs and assigns, all the timber, of the kind and size hereinafter named, upon the tract of land situated in township, county, North Carolina, adjoining the lands of and more fully described as follows: (here describe land), together with full right and privilege for and during the period of years from the date of this conveyance in person, or through their agents or servants, to enter upon said lands, and pass and repass over the same at will, on foot or with teams and conveyances, to cut and remove said timber, and to construct and operate any roads, tramways or railroads over and upon said lands, as the said part.. of the second part, ..h.. heirs and assigns may deem necessary for cutting and removing the timber above conveyed, and to use and operate any road, tramway or railroad that the said part.. of the second part, ..h.. heirs and assigns, may construct upon and over the said land so long as they may desire, either for the removal of said timber, or for any other purpose.

Said part.. of the first part also give, grant and convey to the said part.. of the second part, ..h.. heirs and assigns, the right and privilege in person, or through their agents or servants, to enter upon any other lands owned by in said county of, and to pass and repass over the same at will, on foot, or with teams and conveyances, in case the right of way over the same is needed to facilitate the removal of said timber, and to construct and operate, so long as they may desire, any roads, tramways, or railroads over and upon the same that they may deem proper and needful. The payments for said timber to be hereafter made by said part.. of the second part to said part.. of the first part, and the kind and sizes of timber embraced in this conveyance, are as follows: (here give specifications).

It is understood and agreed by said part.. of the first part, that said part.. of the second part, ..h.. heirs and assigns, shall have years from date of this conveyance to commence the cutting and removing of said timber, and in case the same is not commenced within that time, then this conveyance, and all agreements and provisions for payment for said lumber are to be null and void.

In witness whereof, said part.. of the first part ha.. hereunto set.. hand.. and affixed seal, the day and year first above written.

..... (Seal.)
..... (Seal.)

Signed, sealed and delivered in the presence of

No. 242.—Agreement for sale of land.

North Carolina, county.

This agreement, made and entered into this ...day of...., 19..., by and between, of the county of, and state of North Carolina, part.. of the first part, and, of the county of, and state of North Carolina, part.. of the second part: Witnesseth, that—

For and in consideration of dollar.. to in hand paid by the said part.. of the second part, the receipt whereof is hereby ac-

knowledgeed, the said part.. of the first part, contracted and agreed, and do.. hereby contract and agree, to sell and convey unto the said part.. of the second part, heirs and assigns, all that certain tract or piece or parcel of land situate, lying and being in township, county, North Carolina, adjoining the lands of and more fully described as follows: (here describe the land by metes and bounds). And the said part.. of the first part hereby contract.. and agree.. to execute and deliver to the said part.. of the second part, heirs and assigns, at or their request, on or before the ..day of...., 19.., a good and sufficient deed for the said land with full covenants and warranty: Provided, and upon condition, nevertheless, that the said part.. of the second part, heirs or assigns, pay to the said part.. of the first part, representative or assigns, the sum of dollar.., payable as follows:

The said part.. of the second part hereby agree.. to and with the said part.. of the first part that upon the receipt of the aforesaid good and sufficient warranty deed, to be executed and delivered at the request of the said part.. of the second part on or before the ..day of, 19.., ..h.. will pay to the said part.. of the first part, or his representative or assigns, in addition to the payment already made, the said sum of dollar.., in good and lawful money, in the manner and at the times hereinbefore set forth, the same being the balance of the sum hereby agreed upon as the purchase money for the said tract of land.

It is understood and agreed by the parties to these presents that said sale is to be made at the option of the said part.. of the second part, to be exercised on or before the said ..day of...., 19.. And it is further understood and agreed by the parties hereto that if the said part.. of the second part do.. not demand of the said part.. of the first part the deed herein provided for, and tender payment as herein provided for, on or before the said ..day of...., 19.., then this agreement is to be null and void, and the said part.. of the first part, heirs and assigns, shall be at liberty to dispose of the land to any other person, or to use it as may desire, in the same manner as if this contract had never been made, and neither of the parties hereto shall have any claim upon the other either in law or in equity; otherwise it is to remain in full force and effect.

And to the true and faithful performance of all of the agreements herein contained on the part of the said part.. of the first part and the said part.. of the second part, they do each of them bind themselves, their heirs, successors, executors, administrators and assigns, to the other.. and heirs, successors, executors, administrators and assigns.

In witness whereof, the said parties have hereunto set their hands and affixed their seals, the day and year first above written.

..... (Seal.)
 (Seal.)
 (Seal.)

Signed, sealed and delivered in the presence of

No. 243.—Agreement for the sale and purchase of land.

These articles of agreement, made and concluded this ..day of...., A. D. 19.., at....., in the state of North Carolina, by and between, of said, and, of, in the state of, Witness:

First, The said, in consideration of the sum of dollars, to paid by the said, the receipt of which is hereby acknowledged, and in further consideration of the promise of the said hereinafter contained, doth hereby promise and agree to and

with the said that will, on or before the ..day of...., 19.., make, execute and deliver to the said a good and sufficient deed, with the usual covenants of warranty, release of dower, etc., conveying to in fee-simple all of that tract of land situate, lying and being in the county of and state of North Carolina, known as the, bounded and described as follows:.....

Second, In consideration whereof, the said, doth hereby promise and agree to and with the said that will, on such deed being tendered to by the said on or before the said ..day of...., 19.., pay to the said the further sum of dollars, in addition to the payment already made, being the balance of the purchase-money hereby agreed upon for the said tract of land, payable as follows, viz.:..... The said, on part, in consideration of the foregoing, covenants with the said to pay the purchase-money aforesaid, in the sums and at the times above specified, and also the expenses attending the execution of the deed aforesaid; and hereby agrees to keep the buildings on said premises insured in some reliable insurance company doing business in the for the sum of dollars, payable to the parties hereto respectively as their interests may appear, and also agrees to pay all taxes on said property, and in case of failure the same can be paid by the said, and such money paid by said shall become a part of that to be paid by said under the terms of this agreement; and that, in case of failure to pay any of the said sums for the space of, the said shall have the power, and is expressly authorized to take possession of the said land and sell the same at auction or otherwise: Provided, however, that such sale shall be at the option of said And provided further, that in the event the proceeds of such sale shall exceed the balance of said purchase-money and the other sums hereinbefore provided for, with the interest thereon and the costs of sale, the said shall refund to said such excess.

And to the true and faithful performance of all the agreements herein contained on the part of the said and, each of them bind themselves, their heirs, successors, executors or administrators, to the other and their heirs, successors, executors or administrators.

In witness whereof, said parties have hereunto set their hands and seals, the day and year first above written.

..... (Seal.)
 (Seal.)
 (Seal.)

Signed, sealed and delivered in the presence of.....

No. 244.—Agreement for the sale and purchase of land.

These articles of agreement, made and entered into this ..day of...., 19.., at Raleigh, Wake county, in the state of North Carolina, by and between the Park Avenue Land Company, of said county and state, party of the first part, and, of, part.. of the second part, Witness:

First. The said party of the first part, in consideration of the sum of dollars to it paid by the said part.. of the second part, the receipt of which is hereby acknowledged, and in further consideration of the promise of the said part.. of the second part hereinafter contained, doth hereby promise and agree to and with the said part.. of the second part, that it will, on or before the .. day of, 19.., make and deliver to the said part.. of the second part a good and sufficient deed in fee simple, with the usual covenants of warranty, for all that lot or parcel of land situate, lying and being in the county

of Wake, and state of North Carolina, known as Lot No. of that property of the Park Avenue Land Company, which was purchased by it from Mrs. Henrietta P. Martin, and surveyed and mapped by Riddick and Mann for said Park Avenue Land Company, February 15, 1906, which map is recorded in the office of the register of deeds of Wake County, N. C., in Book of Maps, at page 62; said lot or parcel being bounded by a line described as follows:

Second. In consideration whereof, the said part.. of the second part do.. hereby promise and agree to and with the said party of the first part that will, on such deed being tendered to by the said party of the first part on or before the said ..day of...., 19..., pay to the said party of the first part the further sum of dollars, with interest on the same from at the rate of per cent. per annum, payable, in addition to the payment already made, being the balance of the purchase-money hereby agreed upon for the said lot or parcel of land, as is shown by bonds of even date with this agreement, payable as follows, viz.:

The said part.. of the second part, in consideration of the foregoing, covenant.. and agree.. with the said party of the first part to pay the purchase-money aforesaid, in the sums, and at the times, above specified; and also agrees to pay all taxes on said property, and in case of failure taxes may be paid by the party of the first part, and such money paid by said party of the first part shall become a part of the principal money to be paid by said part.. of the second part, according to this agreement and bear interest in like manner as the purchase-money; and in case of the failure of said part.. of the second part to pay any of the said sums as the same shall become due and payable, whether principal or interest or taxes, the said party of the first part is hereby expressly authorized to take possession of the said land, and sell the same at public auction at the court-house door of Wake county, after first advertising such sale for thirty days by publication once a week for four weeks in some newspaper published in Wake county, and by posting a notice at some conspicuous place at the court-house door and three other public places in said Wake county for thirty days immediately preceding the sale, and convey the same to the purchaser, and out of the proceeds of said sale pay the aforesaid bonds and the interest thereon, also the taxes and the expenses of such sale, including a commission of five per cent, for making such sale, and pay the balance to the part.. of the second part, heirs, executors, administrators or assigns.

And to the true and faithful performance of all the agreements herein contained on the part of the said party of the first part and the said part.. of the second part, each of them bind themselves, their heirs, successors, executors, administrators and assigns, to the other and their heirs, successors, executors, administrators and assigns.

In testimony whereof, the said party of the first part has caused these presents to be signed in its name by its president and its corporate seal to be hereto affixed, and all to be attested by its secretary, and the part.. of the second part ha.. hereunto set hand.. and seal., the day and year first above written.

By....., President.
 (Seal.)
 (Seal.)

Attest:, Secretary.

No. 245.—Deed for a right-of-way.

North Carolina, county.

A B, of, in consideration of \$....., paid him by C D, of...., doth hereby grant to the said C D, his heirs and assigns, the use of a

passage along a certain alley,feet in depth byfeet in breadth, extending fromstreet, in the town aforesaid, along the south side of the present dwelling-house and lot of the said C D, together with the right of free ingress, egress, and regress, for the said C D, his heirs and assigns, his and their tenants and undertenants, occupiers and possessors of the ground of the said C D, contiguous to the said alley, at all times and forever hereafter, into, along, and out of said alley, in common with the said A B, his heirs and assigns, tenants or occupiers of the ground of the said A B, adjacent to the same alley.

To hold the privileges aforesaid to the said C D, his heirs and assigns, to their use forever, in common with him, the said A B, his heirs and assigns, as aforesaid; subject to the equal half part of all necessary expenses, which shall from time to time accrue, in paving, repairing, and cleansing the said alley.

In witness whereof, the said A B hath hereto set his hand and seal, this ..day of...., A. D. 19..

..... (Seal.)

Witness:

No. 245a.—Right-of-way deed to railway company.

State of North Carolina,, county.

This deed, made this the ... day of, 19.., by, of county and state of, of the first part, to railway company, a corporation organized under and pursuant to the laws of the state of North Carolina, party of the second part:

Witnesseth, that said, in consideration of dollars, to paid by said railway company, the receipt of which is hereby acknowledged, ha.. bargained and sold, and by these presents do bargain, sell and convey to said railway company and its successors and assigns, a certain tract or parcel of land in township, county, state of, described as follows

A strip of land feet wide, extending across the tract of land of the said grantor.., which is hereinafter described, and lying feet on each side of a line [to be] located by the said railway company or its successors or assigns as the centre line of a railroad to be constructed by said railway company, its successors or assigns, through, over and across that tract of land belonging to the said, which contains acres, more or less, and adjoins the lands of and others, the same being described in a deed given to by, dated the ... day of, and recorded in the office of the register of deeds for county, in book, page, and being more fully described as follows:

To have and to hold the aforesaid tract or parcel of land, and all privileges and appurtenances thereto belonging, to the said railway company, its successors and assigns, to its and their only use and behoof forever.

And the said, for [himself] [themselves] and heirs, executors, administrators and assigns covenant.. with said railway company, its successors and assigns, that seized of said premises in fee, and ha.... right to convey the same in fee simple; that the same are free and clear from all incumbrances, and that will forever warrant and defend the said title to the same against the claims of all persons whomsoever.....

In testimony whereof, the said ha.. hereunto hand.. and seal.., the day and year first above written.

..... (Seal.)

Attest.....

..... (Seal.)

No. 245b.—Option for Purchase of Land.

North Carolina, County.

Know all men by these presents, that, in consideration of the sum of one dollar (\$1.00) to me in hand paid by, of, North Carolina, the receipt of which is hereby acknowledged, I,, do hereby contract and agree with said to sell and convey unto said, and his heirs and assigns, all that certain tract or parcel of land situate, lying and being in township, county, North Carolina, adjoining the lands of and others, and known as the place, and containing acres, more or less; and that I will execute and deliver to said and his heirs and assigns, at his or their request, on or before the ... day of, 1907, a good and sufficient deed for the said land, with full covenants and warranty; provided and upon condition, nevertheless, that the said, his heirs or assigns, pay to me or my representative or assigns, the sum of dollars (\$....) cash. It is understood and agreed that the said sale is to be made at the option of the said, or his heirs or assigns, to be exercised on or before the said ... day of, 1907. And it is further understood and agreed that if the said, and his heirs and assigns, shall not demand of me the deed herein provided for, and tender payment as herein provided for on or before the said ... day of, 1907, then this agreement is to be null and void, and I am to be at liberty to dispose of the land to any other person or to use it as I may desire in the same manner as if this contract had never been made; but otherwise this contract is to remain in full force and effect.

And to the true and faithful performance of this agreement I do hereby bind myself and my heirs, executors, administrators and assigns, to the said and his heirs, executors, administrators and assigns.

Witness my hand and seal, this day of, 1907.

..... (Seal.)

Witness:.....

North Carolina, county.

I,, a notary public in and for said county and state, duly commissioned, qualified and acting, do hereby certify that, personally known to me and known by me to be the person named in and whose name is signed to the foregoing instrument of writing, personally appeared before me this day and acknowledged the due execution of the foregoing instrument of writing for the purposes therein expressed.

Witness my hand and official seal, this ... day of, 19...

....., Notary Public.

(My commission expires the ... day of, 19...)

North Carolina, county.

The foregoing certificate of, a notary public of county, is adjudged to be correct. Let the instrument, with the certificates, be registered.

Witness my hand, this ... day of, 19...

....., Clerk of Superior Court.

No. 246.—Power of attorney.

Know all men by these presents, that (give name of person or persons giving power of attorney) have made, constituted and appointed, and by these presents do make, constitute and appoint true and lawful attorney for, and in name, place and stead (here set forth the business to be done), giving and granting unto, said attorney, full power and authority to do and perform all and every

act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes, as might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that said attorney and substitute shall lawfully do or cause to be done by virtue thereof.

In witness whereof we have hereunto set our hands and seals, the
 ..day of, 19..... (Seal.)
 (Seal.)

Sealed and delivered in the
 presence of.....

No. 247.—Personal property mortgage—long form.

North Carolina, county.

This indenture, made this ... day of, 19..., between of the county of, and state of North Carolina, party of the first part, and, of the county of, and state of, party of the second part, witnesseth: That whereas, the said party of the first party is justly indebted to the party of the second part in the sum of \$...... in consideration of value received in the purchase of certain personal property hereinafter described, the delivery and receipt of which personal property is hereby acknowledged, and for which purchase the said party of the second part holds a note from said party of the first part, becoming due and maturing as follows: And whereas, the said party of the first part is desirous of securing the payment of the aforesaid note: Now, therefore, the said, party of the first part does hereby bargain, sell and convey to the party of the second part the following articles of personal property, to-wit: (Here describe property). To have and to hold the said personal property, to him, the said, his executors, administrators and assigns. And the party of the first part covenants with the party of the second part that the property herein conveyed is free from encumbrance, and that he has good right and power to make this conveyance, and that he will warrant and defend the title to the said property against all lawful claims.

But on this special trust, that if the said party of the first part, his heirs or assigns, shall well and truly pay or cause to be paid to the said party of the second part, his heirs or assigns, the before mentioned indebtedness according to the conditions of the aforesaid note, bearing even date herewith, and also bearing interest at the rate of six per cent per annum, then this indenture to be null and void; otherwise to be in full force and effect. But if default shall be made in the payment of the said note aforesaid, or the interest thereon, or any part thereof, at the times hereinbefore specified for their payment, the said party of the first part, in such case, does hereby authorize and fully empower the said party of the second part, his executors, administrators or assigns, to sell the said hereby mortgaged personal property, or so much thereof as may be necessary, at public auction, for cash, after advertising the same for twenty days by publication in one or more newspapers published in county and also by posting a notice at some conspicuous place at the door of the court-house of said county where the said property is situate, and apply the proceeds of such sale in discharge of the principal, interest and costs of collection on the before-mentioned note, and pay the surplus, if any, to the party of the first part.

In testimony whereof, the party of the first part has hereunto set his hand and seal, the day and year first above written.

Witness:..... (Seal.)
 (Seal.)

No. 248.—Chattel mortgage—short form.

(See section 1790 of this volume, page 332, and also section 1792, page 333.)

No. 249.—Bill of sale, with warranty.

North Carolina, county.

Know all men by these presents, that, of county and state aforesaid, has, this .. day of, 19.., in consideration of \$.... to him paid by, of said county and state, bargained, sold and delivered to said the following personal property: (Here describe property). To have and to hold the same unto the said, his executors, administrators and assigns. And the said hereby warrants the said property to be sound in every respect, and to be free from any encumbrance whatever; and the said warrants the title hereby given to be good and indefeasible.

..... (Seal.)

Witness:

No. 250.—Assignment by insolvent debtor.

North Carolina, county.

This indenture, made this ... day of, 19.., by and between, of the county of, and state of, of the first part, and, trustee, of the county of and state of, of the second part, witnesseth: That whereas, the said is indebted to various parties and is unable to meet the demands made upon him, and desires to secure an equitable distribution of his property and effects among his creditors, after reserving for himself the exemption allowed by law, and protecting certain creditors hereinafter named: Now, therefore, for and in consideration of the premises and the further consideration of the sum of one dollar to him in hand paid by the said, the receipt of which is hereby acknowledged, the said has bargained and sold, and does hereby convey unto the said, trustee, absolutely and forever, upon the trusts hereinafter set forth, the following named property, effects, etc., viz: all and singular the stock in trade, goods, wares, merchandise, books, accounts, choses in action and effects of any and every nature whatsoever now in the store or place of business of the said, situated at; also one gray mule, one bay horse, one two-horse wagon and harness, together with any and all other personal property of whatever nature and wheresoever situate, belonging to the said, To have and to hold the said property, choses in action, goods and wares, and all other things herein conveyed, unto the said, trustee, his heirs, legal representatives and assigns.

But on this special trust, that the said, trustee, shall collect all of said choses in action, accounts, etc., as far as he may be able so to do, and sell said property, goods, wares, merchandise, etc., at either public or private sale, as may to him seem best to the interest of the creditors, and dispose of the amounts collected and the proceeds arising from such sale or sales as follows:

First. Set apart and deliver to said his exemption allowed by law.

Second. Deduct and retain such costs and expenses as shall be necessary to discharge this trust, together with per cent commissions on receipts and disbursements arising thereunder.

Third. Pay to, of, the amount due on a note for \$.....

Fourth. Pay to, attorney of, \$....., for professional services; and to, \$....., due by acceptance.

Fifth. The balance, to be paid to and distributed pro rata among each and every of my creditors according to their respective claims.

In witness whereof, the said has hereunto set his hand and affixed his seal, the day and year first above written.

..... (Seal.)

Witness:

Note.—If real estate is to be assigned the same should be described before the enumeration of the personal property; and if it is desired to reserve the homestead this should be so stated.

No. 251.—Entry of land—warrant of survey.

North Carolina, county.

Office of entry taker,, 19...

To the surveyor of county—greeting:

Whereas,, a citizen of the state of North Carolina, residing in county, did, on the ... day of, 19..., make entry of the following described land in township, county, said to contain acres, which said entry was and is in words and figures as follows, to-wit:

North Carolina, county.

Entry of land, Number

To, entry-taker of county:

The undersigned claimant, being a citizen of the state of North Carolina, hereby sets forth and shows that the following tract or parcel of land, to-wit: Lying and being in township, county, North Carolina, and more fully described as follows, viz.: (Here describe where the land is situated, the nearest watercourses and remarkable places, and such watercourses and remarkable places as may be therein, the natural boundaries, and the lines of any other person, if any, which divides it from other lands), containing by estimation acres, in vacant and unappropriated land belonging to the state of North Carolina and subject to entry; and the undersigned claimant hereby makes entry of, lays claim to, and prays for a grant for, said land.

This .. day of, 19..., Claimant.

Witness:

. Which said entry was and is endorsed as follows, to-wit: Entry of land. Name of claimant Number of acres claimed Number of entry Date of entry , entry-taker of county.

And whereas, the notice of entry required by statute was duly made by the undersigned by causing a copy of the said entry to be posted for thirty days at three public places in the township or townships in which the land covered by the said entry is located, and also by causing a copy of the said entry to be posted for thirty days at the court-house door of county, being the county in which said land lies, and also by causing a copy of said entry to be advertised for thirty days in, a newspaper published at, being the county-seat of said county [(or, if there be no newspaper published in such county) being the nearest newspaper];

And whereas, no protest against issuing this warrant has been filed with me [(or) protest against issuing this warrant was filed with me, and the court having decided in favor of the said, claimant]:

Now, therefore, you are hereby required, within ninety days, to lay off and survey for the said the land described above in the copy of said entry, which said copy of said entry is hereby made a part of this warrant and order.

In making the survey of said lands, you will observe the directions

laid down in section 1716 of The Revisal of 1905 of North Carolina and the other statutes of the state, and you will make two just and fair plats of your survey, the scale whereof and the number of the entry shall be mentioned on such plats, with a proper certificate annexed to each. In making such plats you shall set down in words the beginning, angles, distances, marks and watercourses, and other remarkable places crossed or touched by or near to the lines of such lands, and also the quantity of acres; and land lying on any navigable water shall be surveyed in such manner that the water shall form one side of the survey, and the land be laid off back from the water.

Before making said survey you shall administer or cause to be administered to the chainbearers, in the manner prescribed by law, an oath to measure justly and truly and to deliver a true account thereof to you; and said chainbearers shall actually measure the land surveyed.

You shall without delay, and within one year, transmit the plats, together with this warrant or order of survey, to the office of the secretary of state, or deliver them to said claimant.

Witness my hand, this ... day of, 19...

.....
Entry-taker of County.

[To be endorsed as follows:]

Entry of land—warrant of survey. Number of entry Date of entry Name of claimant Number of acres claimed township, county.

No. 252.—Warrant for not killing mad-dog.

North Carolina, county, township.

State	}	Before, justice of the peace.
vs.		
C..... D.....		

State of North Carolina, to the sheriff or
any other lawful officer of county—greeting:

A B having complained on oath before the undersigned justice of the peace of said county that on or about the ... day of, 19.., C D was, and still is, the owner of a certain dog, which the said C D knew, or had reason to know, had been bitten by a certain mad-dog, and the said C D has refused, and doth still refuse, to kill said dog bitten as aforesaid, contrary to the statute in such cases made and provided: Now, therefore, I command you to have the body of the said C D before the undersigned on the ... day of, 19.., at ... o'clock ... m., at my office in township, county, to answer the complaint of the said A B and be dealt with as the law directs.

....., Justice of the Peace.
This ... day of, 19...

No. 253.—Notice to owner of sheep-killing dog.

North Carolina, county, township.

State	}	Notice.
vs.		
C..... D.....		

To A B.....:

Take notice, that satisfactory evidence has been lodged before the undersigned justice of the peace of said county, that you own and have in your possession a certain yellow dog, which is in the habit of killing sheep, and the said dog did, on the ... day of, 19.., kill a certain sheep belonging to G H, of this township, as the undersigned is reliably informed and believes; and you will further take notice that you are

required to kill said dog forthwith, or prevent the same from running at large, or you will be dealt with as the statute directs.

....., Justice of the Peace.

This ... day of, 19...

No. 254.—Warrant against owner of sheep-killing dog.

North Carolina, county, township.

State

vs.

C..... D.....

} Before, justice of the peace.

State of North Carolina, to the sheriff or

any other lawful officer of county—greeting:

A B having complained on oath before the undersigned justice of the peace of said county, that C D had in his possession a certain yellow dog which, on the ... day of, 19..., killed a sheep belonging to the said A B, and the said A B having satisfied the undersigned of the same, a notice was issued by me to the said C D to kill the said dog or to prevent him from running at large; and the said C D having failed to do so, contrary to statute, etc.:

You are therefore commanded to apprehend the said C D and have him before me or some other justice of said county immediately, to answer the said charge and be dealt with as the law directs.

This ... day of, 19...

....., Justice of the Peace.

No. 255.—Subpoena—civil—superior court in term.

North Carolina, county—in the superior court.

The state of North Carolina, to the sheriff of county—greeting:

You are hereby commanded to summon, if to be found in your county, personally to be and appear before the honorable judge of the superior court of county, at the court to be held for said county at the court-house in, on the ... day of, 19..., to give evidence in a civil action then and there to be tried, wherein is plaintiff.. and is defendant.., on the part of the

Herein fail not at your peril.

Issued this ... day of, 19...

.....
Clerk Superior Court County.

No. 256.—Subpoena—duces tecum—superior court in term.

North Carolina, county—in the superior court.

The state of North Carolina, to the sheriff of county—greeting:

You are hereby commanded to summon, if to be found in your county, personally to be and appear before the honorable judge of the superior court of county, at the court to be held for said county, at the court-house in, on the ... day of, 19..., to give evidence in a civil action then and there to be tried, wherein is plaintiff.. and is defendant.., on the part of the; and you are further commanded to inform the said that he is commanded diligently to search for, enquire after, and bring with him, and produce at the time and place aforesaid (here describe briefly the deed, letter or other writing which the witness is required to produce).

Herein fail not at your peril.

Issued this ... day of, 19...

.....
Clerk of the Superior Court of County.

No. 257.—Subpoena—state—superior court.

North Carolina, county—in the superior court.

The state of North Carolina, to the sheriff of county—greeting:

You are hereby commanded to summon (if to be found in your county), personally to be and appear before his honor, the judge of our superior court of the county of, at a court to be held at the court-house in, on the ... day of, 19.., to give evidence in an action then and there to be tried, wherein the state of North Carolina is plaintiff and is defendant., on the part of the

Herein fail not at your peril.

Given under my hand, this ... day of, 19...

.....
Clerk Superior Court County.

No. 258.—Subpoena—instanter,

North Carolina, county—in the superior court.

The state of North Carolina, to the sheriff of county—greeting:

You are hereby commanded to summon (if to be found in your county), personally to be and appear instantly before his honor, the judge of our superior court of the county of, at a court now being held at the court-house in to give evidence in an action then and there to be tried, wherein the state of North Carolina is plaintiff and is defendant., on the part of the

Herein fail not at your peril.

Given under my hand, this ... day of, 19...

.....
Clerk Superior Court County.

No. 259.—Subpoena—grand jury.

North Carolina, county—in the superior court.

The state of North Carolina, to the sheriff of county—greeting:

You are hereby commanded to summon (if to be found in your county), personally to be and appear before his honor, the judge of the superior court of county, at, on the .. day of, 19.., to give evidence in a certain matter then and there to be inquired of by the grand jury, wherein the state of North Carolina is plaintiff and is defendant.

Herein fail not at your peril.

This ... day of, 19...

.....
Clerk of the Superior Court of County.

No. 260.—Subpoena to appear before a referee.

North Carolina, county—In the court.

State of North Carolina, to the sheriff of county—greeting:

You are hereby commanded, at the instance of, to summon to appear before me at my office in, on the .. day of, 19.., at ... o'clock .. m., then and there to testify, and the truth to say, in relation to the matters in controversy between; and this you shall in nowise omit under the penalty prescribed by law. Make due return to me on or before the said ... day of, 19.., how you shall have executed this subpoena.

Issued the .. day of, 19.

....., Referee.

Note.—Subpoenas for witnesses before referees may also be issued by the clerk of the superior court.

No. 261.—Sci. fa. against defendant and bail in a criminal case.

North Carolina, county—in the superior court.

State of North Carolina, to the sheriff of county—greeting:

Whereas, lately in our superior court for county, held at the court-house in, on the Monday after the Monday in, 19.., a judgment ni. si. for \$.... was rendered in favor of the state against and his security who had become bound as bail upon recognizance, according to the provisions of act of the general assembly concerning bail, for the personal appearance at the said term of our court of the said, in the matters of the State against then pending in our said court.

We therefore command you, that you make known to the said and, his security, that they be and appear before the honorable judge of our superior court, at a term of said court to be held for the county of, at the court-house in, on the Monday after the Monday of next, then and there to show cause, if any they have, why the said judgment shall not be made final against them, according to their aforesaid undertaking. Herein fail not, and have you then and there this writ.

Witness,, clerk of said court, at office in, the Monday after the Monday of, 19...

Issued this ... day of, 19...
Clerk of the Superior Court of County.

No. 262.—Sci. fa.—failing to answer.

North Carolina, county—in the superior court.

The state of North Carolina, to the sheriff of county—greeting:

Whereas, was lately summoned to attend our superior court for the county of, as; and whereas, the said, at term, 19.., being called, failed to appear or answer as he was bound to do, and it was thereupon ordered by our said court that be fined \$.... ni. si., agreeable to an act of assembly:

You are therefore commanded to make known to the said that he shall personally appear before the judge of our said court, at a court to be held for the county of, at the court-house in, on the Monday after the Monday of next, then and there to show cause, if any he has, why the said fine shall not be made absolute. Herein fail not, and have you then and there this writ.

Witness,, clerk of said court, at office in, this .. day of, 19... Clerk.

No. 263.—Commission to take deposition.

North Carolina, county—in the superior court.

State of North Carolina, to—greeting:

We, reposing special trust and confidence in your integrity, do authorize and empower you to cause to appear before you at such time and place as you may appoint, and on oath to examine touching all such matters and things as shall know of and concerning a certain matter of controversy in our superior court for the county of, pending, wherein plaintiff, and defendant. And the deposition in writing, by you so taken, the same to transmit, sealed with your seal, to our superior court, to be held for said county, on the

Witness,, clerk of said court, at office in, this ... day of, 19... Clerk Superior Court.

No. 264.—Notice to defendant in deposition.

North Carolina, county.

A..... B..... }
 vs. } Notice.
 C..... D..... }

To C..... D.....:

Take notice, that on the ... day of, 19..., at ... o'clock .. m., and thereafter in the law office of, at No. ..., street, in the city of, county of, state of, before, commissioner, the undersigned will take the deposition of and others, to be read as evidence for the plaintiff in the above entitled action, which is now pending in the superior court of county, state of; and you will further take notice, that if the taking of the said deposition is not begun and completed on the said day, the same will be continued from day to day until completed.

....., Plaintiff.

No. 265.—Deposition.

(Title as in No. 264.)

Pursuant to the annexed commission to me directed, I,, commissioner, under the authority thereof, on the ... day of, 19..., at ... o'clock ... m., at the law office of, in the city of, county of, state of, both plaintiff and defendant being present in person (or by attorney, as the case may be; or if either party was absent so state), proceeded to take the deposition of, who being first duly sworn to speak the truth between the said plaintiff and defendant, deposes and says: (Here put down the questions and answers, commencing with the questions of the party at whose instance the deposition is taken.)

The foregoing deposition of was sworn to and subscribed before me at the time and place mentioned above.

This ... day of, 19... .., Commissioner.

No. 266.—Subpoena by a commissioner.

North Carolina, county.

State of North Carolina, to the sheriff or
 other lawful officer of county—greeting:

Whereas, the undersigned has received a commission from the superior court of county to him directed to examine and as witnesses in an action pending in said court, wherein A B is plaintiff and C D is defendant: Now, therefore, you are hereby commanded by the undersigned to summon said and, personally to appear before the said commissioner, at his office in township, county, on the ... day of, 19..., at ... o'clock .. m., then and there to testify and the truth to say in behalf of the plaintiff in said controversy. Herein fail not, and have you then and there this writ.

Witness the hand of said commissioner, this ... day of, 19... .., Commissioner.

Note.—The evidence in taking depositions should be written down in the presence of the commissioner, by him, or some other person, to be selected by the commissioner, which person must not be interested nor of kin to either party, nor attorney nor agent of either party. The deposition should be taken at the time and place designated in the notice, and the caption of the certificate should show with certainty that it was so taken.

If exhibits are referred to by witnesses, the commissioner should identify them as follows: "The paper marked 'A' is the paper referred to in the deposition of, hereunto annexed.

Mark the second with the letter "B," and so on., Commissioner."

If a question is objected to before the commissioner, he should state that the objection was made, and then write down the answer; and the court before which the commission is returnable shall determine the competency of the evidence. If the evidence, however, is clearly and manifestly inadmissible, the commissioner, after writing down the question, should state the objection and that the objection was allowed, and not permit the witness to answer the question at all.

The commissioner should be careful to insert in the commission the name of each witness examined, and to fill all other blanks in the commission.

After the witness has answered all the questions of the parties, the commissioner should read to him the questions and answers distinctly, or allow the witness to read them, and then correct any error which has occurred.

When the examination has closed, the deposition signed by the witness (or his mark made thereto if unable to write) the commission, notice (if produced and proved), deposition and papers referred to, should be fastened together with ribbon and tape, and the ends of the ribbon and tape sealed. The commissioner should then seal up all in a strong envelope and write his name across the seal or seals. The packet should be directed to the clerk of the court whence the commission issued, with the following endorsement thereon, to-wit: "Deposition in the case of A B vs. C D," and it may be transmitted by mail or private hands.

(The foregoing suggestions to commissioners are taken from Eaton's Forms, page 481.—Ed.)

No. 267.—Renunciation of right to administer.

North Carolina, county.

In the matter of the administration of the estate of, deceased.

To, clerk of the superior court of county:

Take notice, that the undersigned, next of kin, to-wit, of, deceased, hereby renounces his right to administer upon the estate of the said, deceased, in favor of, and respectfully asks that may be appointed as the administrator of said estate in his stead

This ... day of, 19... ..

Witness:.....

No. 268.—Citation to person entitled to administer.

North Carolina, county.

In the matter of the administration of the estate of, deceased.

To A..... B.....:

Whereas, it has been made to appear to the undersigned that you are entitled to letters of administration upon the estate of, deceased, late of county, who died intestate, and that thirty days have elapsed since the death of said intestate:

It is therefore ordered, that you qualify as administrator of said estate within twenty days after the service of this citation, or show cause to the undersigned within said period why you should not be deemed to have renounced your right to administer upon said estate.

....., Clerk Superior Court.

This ... day of, 19... ..

No. 269.—Application for letters of administration.

North Carolina, county—In the superior court.

In the matter of the administration of the estate of, deceased.

....., being sworn, doth say that, late of said county, is dead, without leaving any will and testament, and that is the proper person entitled to letters of administration on the estate of the said (or, that he applies after the renunciation of the person or persons so entitled).

Further, that the value and nature of said estate, so far as can be ascertained at the date of this application is as follows: (here describe the property in a general way and give its value), and that the persons entitled as heirs and distributees thereof are as follows (here give names and residences of heirs and distributees, if known, or state that

the same can not, on diligent inquiry, be procured, the names of minors, and whether with or without guardians, and the names and residences of guardians if known).

Sworn to and subscribed before me, this ..day of...., 19..
, Clerk Superior Court.

No. 270.—Application for letters testamentary.

North Carolina, county—In the superior court.

In the matter of the will of, deceased.

....., being duly sworn, doth say, that, late of said county, is dead, having first made and published his last will and testament; and that is the executor named therein;

Further, that the property of the said, consisting of (here give character of property), is worth about \$....., so far as can be ascertained at the date of this application; and that the persons entitled under said will to said property are as follows: (here give names and residences of the devisees, legatees, etc., and designate any that may be minors and state whether they have guardians, and if so, give the names and addresses of the guardians).

Sworn to and subscribed before me this ..day of...., 19..
, Clerk Superior Court.

No. 271.—Application for letters of administration with will annexed.

North Carolina, county—In the superior court.

In the matter of the administration of the estate of, deceased.

....., being duly sworn, doth say: That, late of said county, is dead, leaving a last will and testament; and, the executor therein named, has renounced his office of executor, in writing. The said therefore applies for letters of administration with will annexed, on the estate of the said

Further, that the property of the said, consisting of (here give character of property), is worth about \$....., so far as can be ascertained at the date of this application; and that the persons entitled under said will to said property are as follows: (here give names and residences of the devisees, legatees, etc., and designate any that may be minors and state whether they have guardians, and if so, give the names and addresses of the guardians.)

Sworn to and subscribed before me this ..day of...., 19..
, Clerk Superior Court.

No. 272.—Letters of administration.

North Carolina, county—In the superior court.

State of North Carolina, to all to whom these
 presents shall come—Greeting:

It being satisfactorily proven to the undersigned, clerk of the superior court for county, that, late of said county, is dead, without having made and published any last will and testament, and it appearing that is entitled to the administration of the estate of said deceased, and having qualified as administrat.. according to law:

Now, these are, therefore, to empower the said administrat.. to enter in and upon all and singular, the goods and chattels, rights and credits

of the said deceased, and the same to take into possession, wheresoever to be found, and all the just debts of the said deceased to pay and satisfy, and the residue of said estate to distribute according to law.

Witness my hand and the seal of said court, this ..day of...., 19..

(L. S.)

....., Clerk Superior Court.

Every executor, administrator and collector, within three months after his qualification, shall return to the clerk, on oath, a just, true and perfect inventory of all the real estate, goods and chattels of the deceased, which have come to his hands, or to the hands of any person for him, which inventory shall be signed by him and recorded by the clerk. He shall also return to the clerk, on oath, within three months after each sale made by him, a full and itemized account thereof, which shall be signed by him and recorded by the clerk.—Rev., 42.

When further property, not included in any previous return, shall come to the hands or knowledge of any executor, administrator or collector, he must cause the same to be returned within three months after the possession or discovery thereof.—Rev., 44.

Every executor, administrator, collector and guardian shall, within twelve months from the date of his qualification or appointment, and annually, so long as any of the estate remains in his control, file, in the office of the clerk of the superior court, an inventory and account, under oath, of the amount of property received by him, or invested by him, and the manner and nature of such investment, and his receipts and disbursements for the past year in the form of debit and credit. He must produce vouchers for all payments. The clerk may examine, on oath, such accounting party, or any other person, concerning the receipts, disbursements, or any other matters relating to the estate; and having carefully revised and audited such account, if he approve the same, he must endorse his approval thereon, which shall be deemed prima facie evidence of correctness.—Rev., 99.

No. 273.—Letters of collection where there is a will.

North Carolina, county—In the superior court.

State of North Carolina, to all to whom these presents

shall come—Greeting:

It being satisfactorily proven to the undersigned, clerk of the superior court for county, that, late of said county, is dead, having made last will and testament, and for certain sufficient reasons, it appearing to the undersigned that a delay in offering said will for probate is rendered necessary:

Now, therefore, these are to authorize and empower to enter in and upon all and singular the goods and chattels, rights and credits of the said deceased, and the same to take into possession, collect, preserve and secure, wheresoever to be found, and all the just debts of the said deceased to pay and satisfy. This power and authority shall cease and determine whenever the said will is admitted to probate, and the execut.. therein named, or an administrat.., with the will annexed, is qualified, according to law.

Witness my hand and seal of said court, this ..day of...., 19..

....., Clerk Superior Court.

Note.—The quotations from the Revisal appearing at the end of the next preceding form must also accompany letters of collection.

No. 274.—Letters of collection where there is no will.

North Carolina, county—In the superior court.

The state of North Carolina, to all to whom these

presents shall come—Greeting: .

It being satisfactorily proven to the undersigned, clerk of the superior court for county, that, late of said county, is dead, and for certain sufficient reasons, it appearing to the undersigned that a delay in applying for letters of administration on the estate of the deceased is rendered necessary:

Now, therefore, these are to authorize and empower to enter in and upon all and singular the goods and chattels, rights and credits of the said deceased, and the same to take into possession, collect, preserve and secure, wheresoever to be found, and all the just debts of the

deceased to pay and satisfy. This power and authority shall cease and determine whenever letters of administration are granted on the said estate, and the administrator qualifies according to law.

Witness my hand and seal of said court, this ..day of...., 19..

(L. S.), Clerk Superior Court.

Note.—Same note as to next preceding form.

No. 275.—Letters of administration with the will annexed.

North Carolina, county—In the superior court.

The state of North Carolina, to all to whom these
presents shall come—Greeting:

It being satisfactorily proven to the undersigned, clerk of the superior court for county, that, late of said county, is dead, having made last will and testament (a true copy of which is hereunto annexed), and, the executor.. therein named, having renounced ..office of execut.. in writing, and having qualified as administrator, with the will annexed, of said deceased, according to law:

Now, these are, therefore, to empower the said administrator to enter in and upon all and singular, the goods and chattels, rights and credits of the said deceased, and the same to take into possession, wheresoever to be found, and all the just debts of the said deceased to pay and satisfy, and the residue of said estate to distribute according to said will.

Witness my hand and seal of said court, this ..day of...., 19..

(L. S.), Clerk Superior Court.

Note.—Same note as in preceding form.

No. 276.—Oath of administrator.

I,, do solemnly swear (or affirm) that I will support the constitution of the United States; so help me, God.

I,, do further solemnly and sincerely swear (or affirm) that I will be faithful and bear true allegiance to the state of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the constitution of said state, not inconsistent with the constitution of the United States, to the best of my knowledge and ability; so help me, God.

I,, do further swear (or affirm) that I believe died without leaving any last will and testament; that I will well and truly administer all and singular the goods and chattels, rights and credits of the said, and a true and perfect inventory thereof return according to law; and that all other duties appertaining to the charge reposed in me, I will well and truly perform, according to law, and with my best skill and ability; so help me, God.

No. 277.—Oath of executor.

I,, do solemnly swear (or affirm) that I will support the constitution of the United States; so help me, God.

I,, do further solemnly and sincerely swear (or affirm) that I will be faithful and bear true allegiance to the state of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the constitution of said state, not inconsistent with the constitution of the United States, to the best of my knowledge and ability; so help me, God.

I,, do further swear (or affirm) that I believe this writing to be and contain the last will and testament of, deceased; and that I will well and truly execute the same, by first paying his debts and then his legacies, as far as the said estate shall extend, or the law shall charge me; and that I will well and faithfully execute the office of executor, agreeably to the trust and confidence reposed in me, and according to law; so help me, God.

No. 278.—Administrator's bond.

North Carolina, county.

Know all men by these presents, that we,, are held and firmly bound unto the state of North Carolina, in the sum of \$...., to the payment whereof we bind ourselves and each of us, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Signed and sealed, this ..day of, 19..

The condition of this obligation is such, that whereas, the above bounden has applied for letters of administration upon the estate of, deceased; now, therefore, if the said shall be appointed as administrator of the estate of the said and shall in all things faithfully execute the trust reposed in him as such and obey all lawful orders of the clerk or other court touching the administration of the estate committed to him, then this obligation to be void; otherwise to remain in full force and effect.

Signed, sealed and delivered in the
presence of,
Clerk Superior Court.

..... (Seal.)
..... (Seal.)
..... (Seal.)

..... makes oath that he is a resident and freeholder in the state of North Carolina and is worth the sum of \$..... over and above all his debts and liabilities and his homestead and personal property exemptions. (Each makes the same oath.)

No. 279.—Inventory of administrator.

North Carolina, county.

In the matter of, administrator of Inventory.

To Hon., C. S. C.:

....., administrator of, respectfully returns and shows, upon oath, that the following is a just, true and perfect inventory of the personal property belonging to the estate of, deceased, late of county, which has come into the hands of the said administrator or into the hands of any person for him:

Personal Property.

One note on, dated ... day of, 19..; due ... day of, 19..,	\$100.00
An account against, dated ... day of, 19,	20.00

Notes and Accounts—Good.

One note on, dated the ... day of, 19..; due ... day of, 19.,	\$50.00
An account against, etc.....	

Notes and accounts—doubtful.

(Itemize them as above.)

....., Administrator of

Sworn to before me, this ..day of, 19..

....., Clerk Superior Court.

No. 280.—Order to file inventory.

North Carolina, county—In the superior court.

To, administrator (or executor) of the estate of....—Greeting:

Whereas, three months have elapsed since your qualification as administrator of the estate of, deceased, and you have failed to file an inventory of said estate in the office of the clerk of the superior court, as required by law:

It is therefore ordered by the clerk of said court, that you file said inventory within twenty days from the service of this order at his office in, or show cause why an attachment should not be issued against you as prescribed by statute.

....., Clerk Superior Court.
This ..day of...., 19..

No. 281.—Citation to administrator to render annual account.

North Carolina, county—In the superior court.

To...., administrator (or executor) of the estate of....—Greeting:

Whereas, you have failed to exhibit your annual account to the clerk of the superior court of county, as required by law:

It is therefore ordered by the said clerk of the superior court of said county, that you file such return forthwith, in the office of said clerk, at, or show cause why an attachment should not be issued against you as prescribed by law; and you will take notice that unless said annual account is filed in the office of the undersigned, or good cause shown, within twenty days after the service of this order, the said attachment will issue against your body for contempt.

This ... day of, 19... ..
..... Clerk Superior Court County.

No. 282.—Order of commitment for failing to account.

North Carolina, county—In the superior court.

State of North Carolina, to the sheriff or other
lawful officer of county—Greeting:

Whereas,, administrator (or executor) of the estate of, deceased, has failed to file his annual account as said administrator before the undersigned, as by law he is required to do, though heretofore ordered by me so to do:

Now, therefore, you are hereby commanded to arrest the said, administrator as aforesaid, and commit him to the common jail of county, there to remain until he exhibits said account as is required, or is otherwise discharged by law.

....., Clerk Superior Court.
This ..day of...., 19..

No. 283.—Citation to render final account.

North Carolina, county—In the superior court.

To, administrator (or executor) of—Greeting:

Whereas, it is enacted that "an executor or administrator may be required to file his final account for settlement in the office of the clerk of the superior court by a citation directed to him, at any time after two years from his qualification, at the instance of any person interested in the estate;" and whereas, you have failed to file your final account for settlement:

Now, therefore, at the instance of, persons interested as distributees of said estate, you are hereby cited to file your final account for settlement in the office of the clerk of the superior court, for county, at his office in, within twenty days from the service of this citation. This you shall in no wise omit under the penalty enjoined by law.

This ..day of...., 19.., Clerk Superior Court.

No. 284.—Administrator's account.

North Carolina,county.

In the matter of..... }
 administrator of..... } Final account.

To Hon., C. S. C.:

....., administrator of the estate of, respectfully returns and shows, upon oath, the following as a full, just, true and perfect final account for settlement of his transactions as such administrator:

1900.	Dr.	
July 1—Amount of cash on hand.....		\$200.00
Aug. 1— “ from sale of personal property.....		100.00
Dec. 1— “ collected on note of.....		50.00
Total receipts		\$350.00

1900.	Cr.	
July 1—Paid clerk's costs.....		\$ 1.00
July 1—Paid, for coffin.....		30.00
July 15—Paid on note of.....		59.00
Aug. 1—Paid to, professional services.....		50.00
Total		\$140.00
Commissions at 5 per cent. on receipts and disbursements on \$490.00.....		24.50
Clerk's commissions and costs.....		4.50
July 1, 1901—Balance due estate.....		181.00
Total		\$350.00

....., Administrator.

Sworn to before me this ..day of...., 19..
, Clerk Superior Court.

The foregoing final account of....., administrator of the estate of, together with his vouchers, having been examined and carefully audited by me, is hereby approved and ordered to be recorded and filed.

This ..day of...., 19..
, Clerk of the Superior Court ofCounty.

No. 285.—Petition for license to sell evidences of debt.

North Carolina, county—In the superior court.

In the matter of A B, admin- }
 istrator of C D, Ex parte. } Petition.

A B, administrator of the estate of C D, deceased, maketh oath:
 1st. That letters of administration upon the estate of were granted him more than one year before the filing of this petition.

2d. That he has been unable to collect, or deems insolvent, the following evidences of indebtedness belonging to said decedent, to-wit:

Note due the ..day of...., 19.., from, for \$.....

Note due the ..day of...., 19.., from, for \$.....

Note due the ..day of...., 19.., from, for \$.....

Wherefore, the petitioner prays that he may be allowed to sell said evidences of indebtedness at public auction for cash.

A B, Administrator.

Sworn to and subscribed before me this ..day of...., 19..

....., Clerk Superior Court.

No. 286.—Order to sell evidences of debt.

North Carolina, county—In the superior court.

(Title as in No. 285.)

It appearing to the court by affidavit of A B, administrator of C D, deceased, that certain evidences of indebtedness belonging to the said decedent, cannot be collected, or are deemed by him insolvent, which evidences of indebtedness are as set forth in the descriptive list filed by said, as aforesaid:

It is ordered and adjudged, that the said be and he is hereby authorized to sell said evidences of indebtedness, after twenty days' notification posted at the court-house and four other public places in county, for cash, to the highest bidder, and make return of the proceeds of said sale to this court as in other cases of assets.

This ..day of...., 19..

....., Clerk Superior Court.

No. 287.—Administrator's notice.

Having qualified as administrator of the estate of, deceased, late of county, North Carolina, this is to notify all persons having claims against the estate of said deceased to exhibit them to the undersigned at, on or before the ..day of...., 19.., (date to be twelve months from date of publication), or this notice will be pleaded in bar of their recovery. All persons indebted to said estate will please make immediate payment.

....., Administrator of

This ..day of...., 19..

No. 288.—Petition to sell lands for assets.

North Carolina, county.

In the superior court—Before the clerk.

A B, Adm'r of C D, dec'd,

v.

E F, and others, heirs at law.

} Petition to sell lands for assets.

To, clerk of the superior court of county:

The petition of A B, administrator of C D, deceased, respectfully sheweth:

1. That he was duly appointed administrator of the estate of said intestate, by the clerk of the superior court of said county, on the ..day of...., 19.., and at once entered upon the administration of said estate.

2. That from the best information and knowledge which he has been able to obtain, the debts outstanding against the said estate amount to about \$.....

3. That the value of the personal estate of said intestate was \$...., and the same has been applied as follows, to-wit: (Here state application).

4. That at the time of his death the said intestate was seized in fee-simple of the following lands: (Give description of the lands of decedent, each tract separately) and that the estimated value thereof (each tract separately) is \$....

5. That the said decedent left him surviving the following named heirs at law (or devisees):, aged ..years, residing in; and, aged ..years, residing in

6. That a sale of said lands is necessary to pay the debts of said intestate and the charges of administration.

Wherefore, your petitioner prays: 1st. That a decree may be made by this court for the sale of said lands on such terms as the court may direct. 2d. That a commissioner may be appointed to sell said lands under the direction of the court.

....., Attorney for Petitioner.

This ..day of...., 19..

A B, administrator of, the plaintiff in the above entitled cause, being duly sworn, says that the foregoing petition is true to his own knowledge, except as to matters stated upon information and belief, and as to those matters he believes it to be true.

....., Administrator of

Sworn to this ..day of...., 19..

....., Clerk Superior Court.

No. 289.—Application for guardian ad litem.

North Carolina,county.

In the superior court—Before the clerk.

A B, Adm'r of C D, dec'd,

v.

E F and others, heirs at law.

} Application.

To the clerk of the superior court of county:

The plaintiff in the above-entitled proceeding respectfully sheweth to the court, that and, infant defendants in the above-entitled proceedings for the sale of real estate to make assets, are minors, and without general or testamentary guardian, and that the said minors have been duly served with the summons in said proceeding. Wherefore, the said plaintiff hereby makes application to said court to appoint some suitable person to act as guardian ad litem for said minors and to represent their interest in said proceeding.

This ..day of...., 19..

A B, Administrator.

Note.—For other forms in the appointment of guardian ad litem or next friend, see the forms under partition proceedings, No. 357 et seq.

No. 290.—Order appointing guardian ad litem.

North Carolina,county.

In the superior court—Before the clerk.

A B, Adm'r of C D, dec'd

v.

E F and others, heirs at law.)

} Appointment of guardian ad litem.

It appearing from the sworn complaint and application in this proceeding that, infant defendants, are without general or testamentary guardians, and, their next friend, who is found by the court, after due inquiry as to his fitness, to be a suitable, discreet and

competent person, having come into court and signified his willingness to represent said minors: It is therefore, on motion of, ordered that be and he is hereby appointed guardian ad litem of the infant defendants,, in this proceeding, and he is authorized and directed to appear and defend the same on their behalf, as such guardian.

This ..day of..., 19....., Clerk Superior Court.

No. 291.—Order of sale.

North Carolina,county.

In the superior court—Before the clerk.

A B, Adm'r of C D, dec'd	}	Order of sale.
v.		
EF and others, heirs at law		

This proceeding coming on to be heard upon the petition of A B, administrator, and being heard, and it appearing to the court that the defendants have all been properly served with summons and made parties hereto and that the personal estate of C D, deceased, is insufficient to pay his debts and the charges of administration:

It is therefore ordered, adjudged and decreed, that the lands described and specified for sale in said petition be sold, in order to pay so much of said debts and charges as the personal estate may be insufficient to discharge.

It is further ordered and decreed that A B be and he is hereby appointed a commissioner to sell said land at the court-house door of county to the highest bidder at public auction upon the following terms, to-wit: (here state terms of sale); and that he sell the same on the ... day of..., 19..., after posting a notice of said sale at the court-house door and at three other public places in county for thirty days immediately preceding such sale, and also publishing said notice for four weeks in, a newspaper published in, North Carolina; and the said commissioner shall report his proceedings in the premises to this court within ten days from date of sale. And this cause is retained for further direction.

This ..day of..., 19....., Clerk Superior Court.

No. 292.—Notice of sale.

Under and by virtue of an order of the superior court of county, made in the special proceeding entitled v., the same being No. upon the special proceeding docket of said court, the undersigned commissioner will, on, the ..day of ..., 19..., at ..o'clock, .. m., at the court-house door in, North Carolina, offer for sale to the highest bidder for cash that certain tract of land lying and being in township, county, North Carolina, adjoining the lands of and others, and more particularly described as follows, to-wit: (Here describe the land fully.)

This ..day of..., 19.....

....., Commissioner.

No. 293.—Report of sale.

North Carolina,county.

In the superior court—Before the clerk.

A B, Adm'r of C D, dec'd	}	Report of sale.
v.		
EF and others, heirs at law		

To, C. S. C.,county:

Pursuant to an order of the superior court of county, made in the above-entitled proceeding, I exposed to sale to the highest bidder,

at the court-house door of county, on the ..day of...., 19...; at ..o'clock ..m., after due advertisement, the lands mentioned and described in the petition in this cause, when became the last and highest bidder, at \$. per acre, cash (or, if time was given, state what time), and the said purchaser stands ready to pay the purchase-money for the said land. I consider the price bid a fair and reasonable one and, therefore, recommend that the sale be confirmed and a deed be made to the purchaser upon payment of the purchase-money.

This ..day of...., 19..., Commissioner.

No. 294.—Decree confirming sale.

North Carolina,county.

In the superior court—Before the clerk.

A B, Adm'r of C D, dec'd	}	Decree.
v.		
E F and others, heirs at law		

This proceeding again coming on to be heard, and it appearing that the said A B, commissioner, appointed by the court to sell the lands described in the petition of the plaintiff, on the ..day of...., 19... sold at public auction to G H, the land described in the petition, at the price of \$. per acre, upon the following terms, to-wit: (here state terms), and it appearing to the court that the said sale was in all respects duly and properly conducted and made, and that the price offered as aforesaid was and is just and reasonable:

It is therefore ordered, adjudged and decreed, that the said sale be and it is hereby in all respects confirmed, and that the said A B, commissioner as aforesaid, upon the payment of the purchase-money, and every part thereof, shall execute and deliver to the said purchaser and his heirs and assigns a deed in fee simple for the said land; and the said, administrator of, upon receipt of said purchase-money shall apply a sufficiency thereof to the payment of such debts and charges of administration as the personal estate may have been insufficient to discharge, after first deducting the cost of this proceeding. If any surplus shall remain after the payment of said debts and charges, the same is to be considered as real estate, and is to be disposed of by the adminstrator of said estate among such persons as would have been entitled to the land according to law.

This ..day of...., 19...

....., Clerk Superior Court.

No. 295.—Commissioner's deed.

North Carolina, county.

This deed, made this ... day of, 19..., by A B, commissioner, under a judgment of the superior court of said county, in the special proceedings entitled A B, administrator of C D, deceased, against E F and others, party of the first part, to G H, of county, North Carolina, party of the second part: Witnesseth, that whereas, the said A B, commissioner, being thereto licensed by a judgment in said proceedings, did, on the ... day of, 19..., after due advertisement, expose the land hereinafter described, to public sale at, and then and there the said G H became the last and highest bidder for said land at the sum of \$. and complied with the terms of sale; and whereas, upon report of said sale to said court, the same was confirmed and the said A B, commissioner as aforesaid, was ordered by the judgment of said court to execute a deed in fee simple to said purchaser upon payment of said purchase money; and whereas, the said purchase-money has been paid in full: Now, in consideration of the premises, the said A B, commissioner as aforesaid, doth hereby

bargain, sell and convey to the said G H, and his heirs and assigns, that certain parcel or lot of land, situate in township, county, North Carolina, adjoining the lands of and others, and bounded as follows: (here describe land by metes and bounds), and containing acres, more or less. To have and to hold said land, with its appurtenances, to him, the said G H, his heirs and assigns forever, in as full and ample manner as said A B, commissioner as aforesaid, is authorized and empowered to convey the same.

In witness whereof, the said A B, commissioner, hath hereto set his hand and seal, the day and year first above written.

A B, Commissioner. (Seal.)

No. 296.—Administrator—notice to become a party.

North Carolina, county—In the superior court.

.....
vs. } Notice to administrator of
.....

State of North Carolina, to the sheriff of county—greeting:

Whereas, a civil action was lately commenced in this court by against, and, the said having died during the pendency of the same, intestate, and having duly administered on his estate, at term of said court the death of the said defendant,, was suggested on the record, and it was thereupon ordered that a notice should be issued to the said administrator as aforesaid:

We therefore command you, that you make known to the said that he be and appear before the judge of our superior court, at a court to be held at the court-house in on the Monday after the Monday of, then and there to defend the said suit, and further to do and receive what our said court shall then and there consider of him in this behalf.

This ... day of, 19... .., Clerk Superior Court.

No. 297.—Execution against administrators and executors—old form.

North Carolina, county.

State of North Carolina, to the sheriff of county—greeting:

We command you, that you cause to be levied of the goods and chattels of C D in your county, which belonged to the estate of C D, deceased, at the time of his death, in the hands of A B, his administrator (or executor), a certain debt of \$...., with interest thereon from the Monday after the Monday in, 19.., which R S, lately in our superior court, held for the county of, at the court-house in, recovered against the said A B, as administrator (or executor); as also \$...., which in our said court were awarded to the said R S for his damages, which were sustained by reason of detaining the said debt, and the further sum of \$...., which were awarded to the said R S for costs and charges in the said suit expended, whereof the said A B, administrator of C D, is convicted, as appears to us of record, if the said A B hath so much thereof in his hands to be administered. And if the said A B hath not so much in his hands to be administered, then you are commanded that you cause to be levied of the proper goods and chattels, lands and tenements of the said C D, in your county, the sum of \$...., for costs and charges as aforesaid. And have you the said moneys, besides your fees for this service, before our said court at, the Monday after the Monday in then and there to render the said costs and charges as aforesaid.

Herein fail not, and have you then and there this writ.

Issued the ... day of, 19... ..

....., Clerk Superior Court.

No. 298.—Execution against administrator or executor—new form.

North Carolina, county.

R S

vs.

A B, administrator of C D.

} Execution.

The state of North Carolina, to the sheriff of county—greeting:

Whereas, judgment was rendered on the ... day of, 19.., in the superior court of county, in an action between R S, plaintiff, and A B, administrator of C D, defendant, in favor of said R S and against the said A B, administrator of C D, for the sum of \$.... as appears to us by the judgment roll filed in the office of the clerk of the superior court of said county; and whereas, the said judgment was docketed in this county on the ... day of, 19..; and the sum of \$.... is due thereon, with interest on \$.... from the ... day of, 19..; and the further sum of \$.... for costs and disbursements in said suit expended, for which the said A B, administrator of C D, is liable:

You are therefore commanded to satisfy the said judgment out of the personal property in your county which belonged to the estate of C D, deceased, at the time of his death, in the hands of A B, his administrator, if the said A B hath so much thereof in his hands to be administered; and if sufficient personal property can not be found in the hands of the said A B belonging to the estate of the said C D and so to be administered, then you are commanded to satisfy the said judgment out of any moneys in the hands of said A B, administrator of C D, arising from the sale of any real property belonging to the estate of the said C D, deceased. And have you this execution, together with the said moneys, before our said court at the court-house in N. C. on the Monday after the Monday of, 19.., then and there to render the same to the plaintiff.

Issued this ... day of, 19...

....., Clerk of the Superior Court.

No. 299.—Refunding bond of distributee.

North Carolina, county.

Know all men by these presents, that we, and and, of county, are held and firmly bound unto the state of North Carolina in the sum of \$...., to the payment of which well and truly to be made we bind ourselves, our executors and administrators, firmly by these presents.

Signed and sealed, this ... day of, 19...

The condition of the above obligation is such, that whereas, the above bounden has this day received of, administrator of, deceased, the sum of \$...., in full of his distributive share of the personal estate of the said, deceased: Now, therefore, if any debt or debts, truly owing by the deceased, shall be hereafter sued for and recovered, or otherwise made to appear, and the said shall well and truly refund and pay the ratable part of such debt or debts chargeable against his said distributive share, and save harmless the said administrator, then in that case the above obligation is to be void, otherwise to remain in full force and effect.

..... (Seal.)

..... (Seal.)

..... (Seal.)

No. 300.—Administrator's or executor's deed.

North Carolina, county.

This indenture, made this ... day of, 19.., between A B, administrator of E F, deceased, of said county and state, and C D, of

said county and state: Witnesseth, that whereas, on the ... day of, 19.., an agreement was made between the said intestate and the said C D, whereby the said E F engaged to convey the estate in said agreement described, to said C D, which said agreement was as follows, to-wit: (here recite the agreement). And whereas, the said C D has fully complied with and performed all the conditions on his part in said agreement contained:

Now, therefore, in order to carry into full effect the said agreement of the said E F, on his part, I, the said A B, administrator (or executor) as aforesaid, in consideration of dollars, to me in that capacity paid by the said C D, the receipt whereof I hereby acknowledge, and in consideration that the said C D has in all things fulfilled and performed the condition on his part in said agreement contained, hereby grant, convey, sell and assign to the said C D, his heirs and assigns, all the said E F's right and interest, which he had at the time of his decease, in and to the following described real estate, to-wit (here describe real estate). To hold the same to the said C D, his heirs and assigns, to his and their use forever, in as full a manner as I, the said A B, in my capacity of administrator (or executor) of said E F, as aforesaid, am empowered to convey the same.

A B, Administrator of E F. (Seal.)

In witness whereof, etc.

Witness:.....

No. 301.—Deed by an administrator or executor under a will.

North Carolina, county.

This indenture, made this ... day of, 19.., between A B, of said county and state, executor of the last will and testament of C D, deceased, and E F, of said county and state: Witnesseth, that whereas, the said C D, in order to enable his executor to carry into effect his intentions, did, in and by his last will, authorize and empower his said executor, in any manner which he should deem proper, to make sale of and execute and deliver deeds to convey all his, the testator's, real estate:

Now, therefore, by authority to me given by said C D in his last will, I, A B, executor of C D as aforesaid, in consideration of the sum of dollars to me paid by E F, of, the receipt whereof is hereby acknowledged, do hereby sell and convey to the said E F, his heirs and assigns, the following described parcel of real estate, which was the property of the said C D, situated in, and bounded and described as follows, to-wit: (here describe the premises).

To hold the aforesaid premises, to him, the said E F, his heirs and assigns, to his and their use forever.

In witness whereof, I, the said A B, executor aforesaid, have hereunto set my hand and seal, this ... day of, 19..

A B, Executor of C D. (Seal.)

Witness:.....

Note.—The above form may, when required, be easily changed to suit other provisions of the section from which it is drawn.—Ed.

No. 302.—Notice to owner of dividing fence.

North Carolina, county, township.

A.....	B.....	} Before....., J. P.
vs.		
C.....	D.....	

State of North Carolina, to any constable

or other lawful officer of county—greeting:

You are hereby commanded to summon C D to appear before the undersigned, justice of the peace of township, county,

on the ... day of, 19.., at ... o'clock ... m., (which time must be not less than five days from service of summons), for the purpose of adjusting all matters in controversy respecting the dividing fence between A B. plaintiff, and C D, defendant.

....., Justice of the Peace.
This ... day of 19...

Note.—When the above notice is served, the return of the officer serving the same shall be noted on back as in other process, and the justice will note in his docket his proceedings in the case, as in other actions, as:

"The above-entitled action, being proceedings to determine a controversy respecting a dividing fence between said plaintiff and defendant, was commenced on the ... day of, 19.., by the said plaintiff, by issuing summons returnable before me on the ... day of, 19.., at ... o'clock ... M.

"... day of, 19... Summons returned; both parties present in court. From the allegations and proofs offered by the parties, it appeared that A B was entitled to contribution from C D, and the same was adjudged by me; whereupon I called upon A B to name an indifferent person to act as juror in his behalf, and the said plaintiff selected of township. I then called upon C D to name an indifferent person to act as juror in his behalf, and he selected of township. Whereupon I selected of township, as the third indifferent person. Summons was thereupon issued to the said parties to appear before me on the ... day of, 19.., and to be sworn and to view the premises and decide the matters in controversy between A B and C D, respecting a certain dividing fence between them. The said summons was duly served, and the parties appeared and were sworn by me. They then viewed the said premises and reported in writing their decision that A B recover of C D \$... contribution, and that the said parties keep up a fence as good as the one now erected on the line of the present fence, one-half to be paid by each party; A B to keep the east end and C D the west end of said fence, which report was confirmed by me, and it was adjudged by me that A B recover of C D the sum of \$..., contribution, and that the said parties keep up a fence as good as the one now erected on the line of the present fence, one-half of the expense thereof to be paid by each party; A B to keep up the east end of said fence and C D to keep up the west end of said fence, and each party was adjudged by me to pay one-half of the costs of this action, including fee of register of deeds as follows: jurors, \$...; constable, \$...; magistrate, \$...; register, \$...; total, \$..... One-half, \$.....

"This ... day of, 19... Justice of the Peace."

Note.—The foregoing transcript, with the report of the jury, shall be sent to the register of deeds of the county for registration.—Ed.

No. 303.—Summons of jury on fence.

(Title as in No. 302.)

State of North Carolina, to any constable
or other lawful officer of county—greeting:

You are hereby commanded to summon and and, indifferent persons chosen by myself, and the plaintiff and defendant above, to act as jurors in deciding a controversy between the said A B and C D, respecting a dividing fence between them, to appear at the office of the undersigned on the ... day of, 19.., at o'clock ... m., and be sworn, to the end that they may view the premises of the said parties, and decide the said controversy between them, of which decision they will make report under their hands to me, stating the kind of fence to be kept up, and the part to be kept up by each, and what is due from C D to A B, if anything, for repairs already made. Herein fail not, and have you then and there this precept.

This ... day of, 19... Justice of the Peace.

No. 304.—Report of jury.

(Title as in No. 302.)

To E F, justice of the peace of township:

The undersigned jurors, chosen to view the premises and decide all matters of controversy between A B and C D in regard to a dividing fence, etc., respectfully report: That, obedient to a precept issued to them, they viewed the premises on which said dividing fence is located, and find that the same are near creek, and on the south side of the home tract of A B; that the said fence runs east and west between the cultivated fields of A B and C D; that A B has built the present

fence between said fields, and the same is a lawful fence and well put up; that the cost of erecting said fence is reasonably worth \$...., one-half of which should be paid by C D. And the jurors further find that said fence should be kept up, and that one-half of the cost thereof should be paid by A B and one-half by C D; that A B should keep up the east end of said fence and C D the west end; that the said fence is 600 feet long, 300 feet of which should be kept up by each.

(Signed)

This ... day of, 19...

No. 305.—Advertisement against hunting and fishing.

Notice.—All persons will take notice, that they are hereby forbidden, under the penalty of law, to hunt with gun or dog (or to catch, or attempt to catch, fish in any manner whatsoever) on my land in township, county, adjoining the lands of..... and others, and bounded as follows: (Here set forth boundaries as in deed.)

This ... day of, 19...

No. 306.—Warrant for unlawful hunting.

North Carolina, county, township.

State	}	Before, justice of the peace.
vs.		
C..... D.....		

State of North Carolina, to the sheriff

or any other lawful officer of county—greeting:

Whereas, complaint is this day made before the undersigned, that on or about the ... day of, 19.., one did, unlawfully and wilfully, and contrary to the statute in such case made and provided, hunt with gun and dogs upon the lands of the said, without having first obtained permission of the said

You are therefore commanded to arrest the said, if to be found in your county, and to have him before me or some other justice of said township, immediately, to answer said complaint. Herein fail not.

Given under my hand, this ... day of, 19...

....., Justice of the Peace.

No. 307.—Guardian bond.

North Carolina, county—In the superior court.

Know all men by these presents, that we, and and, are held and firmly bound unto the state of North Carolina in the sum of dollars (double the amount of personal property and rents and profits of real estate), to be paid to the state of North Carolina, in trust for the benefit of the children hereinafter named (committed to the tuition of said, to which payment well and truly to be made, we bind ourselves, jointly and severally, our executors and administrators, firmly by these presents. Sealed this ... day of, 19...

The condition of this obligation is such, that whereas, the above bounden is appointed guardian of (here give names of wards), infants: Now, if the said guardian shall well and faithfully execute the trust reposed in him, and shall account for and apply the property of the said infants under the direction of the superior court of county, and shall obey all lawful orders of the clerk or judge touching the guardianship of the estate committed to him, then this obligation is to be null and void; otherwise to remain in full force and effect.

In presence of, clerk superior court.

..... (Seal.)

..... (Seal.)

..... (Seal.)

..... maketh oath that he is worth \$.... over and above all his debts and liabilities and his homestead and personal property exemptions.

Subscribed and sworn to before me, this ... day of, 19...
....., Clerk Superior Court.

[Here follow with same form as to each surety.]

[Bond is to be acknowledged before and approved by the clerk of the superior court.]

No. 308.—Guardian's oath.

North Carolina, county—In the superior court.

I,, do solemnly swear that as guardian I will well and truly administer all and singular the goods and chattels, rights and credits of the said, my ward, wheresoever to be found, and that I will secure and improve and further manage said estate and every part thereof for the benefit and advantage of the said minor orphan, and that I will in all things well and truly execute the duties of the office of guardian of my said ward according to the best of my skill and ability, and according to law: So help me, God.

Sworn and subscribed before me, this ... day of, 19...
....., Clerk Superior Court.

No. 309.—Citation to guardian to render annual account.

North Carolina, county—In the superior court—before the clerk.
To, guardian:

Whereas, it is enacted that every guardian shall annually exhibit to the clerk of the superior court an inventory and account, under oath, of the amount of property received by him, or invested by him, and the manner and nature of such investment, and his receipts and disbursements on account of his guardianship in the form of debit and credit, and produce vouchers of the same, that the same may be examined and duly audited.

And whereas, you have failed to file your account before me as guardian for for the year 19...; you are therefore cited to appear before me at, on, the ... day of, 19..., then and there to render the same as prescribed by law. Herein fail not, under the penalty prescribed by law.

This ... day of, 19..., Clerk Superior Court.

No. 310.—Citation to guardian to renew bond.

North Carolina, county.

State of North Carolina, to the sheriff of county—greeting:

Whereas, it is enacted that every guardian shall renew his bond before the clerk of the superior court every three years during the continuance of his guardianship; and whereas,, guardian of (here give names of wards), has failed to renew his bond as aforesaid:

We therefore command you, without delay, to cite the said to appear before the clerk of the superior court of county, at his office in, within twenty days after the service of this citation, for the purpose of renewing his bond as guardian aforesaid; and to notify the said that in default therein, will be removed from guardianship, and further proceeded against as prescribed by law. And of this process you are to make prompt return.

This ... day of, 19..., Clerk Superior Court.

No. 311.—Guardian's lease.

North Carolina, county.

This indenture, made this ... day of, 19.., between, of said county and state, guardian of, on the one part, and, of the county and state aforesaid, on the other part, witnesseth: That whereas, the said, guardian as aforesaid, did, on the ... day of, 19.., at, proceed to rent and lease out at public auction for the term of ... years the lands belonging to his said ward, to-wit: The tract, adjoining the lands of and others, when and where the said became the last and highest bidder at the yearly rent of \$...., the payment of which is secured by bond with as security, and bearing even date with these presents, payable on the ... day of, 19...

Now, therefore, this indenture further witnesseth: That, for and in consideration of the premises and the covenants hereinafter contained, the said, guardian as aforesaid, hath leased, demised, rented and farm-let, and by these presents doth lease, demise and farm-let to the said the lands and tenements above described for the term of years, commencing on the ... day of, 19.., to have and to hold the same, together with all and singular the uses, privileges and appurtenances thereunto belonging, or in anywise appertaining, to him the said, his executors and administrators, free and discharged of any and all encumbrances, and to have peaceable possession and quiet enjoyment of the same during the said term of ... years, commencing on the ... day of, 19.., as aforesaid; he, the said, yielding and paying the rent secured as above recited, at the several times when due. And the said hath covenanted, and by these presents doth covenant, that he will pay the rents above mentioned as the same fall due, and that he will not commit or permit waste of any description, but will keep the said plantation and premises and every part thereof in good repair, and leave them in good repair at the end of the said term.

In testimony whereof, the parties do hereunto set their hands and seals, the day and year first above written.

Executed in the presence of (Seal.)
 (Seal.)

No. 312.—Application for guardianship.

North Carolina, county—In the superior court—before the clerk.

In the matter of A..... B..... and }
 C..... D....., minor orphans. } Application for guardianship.

To the clerk of the superior court of county:

The application of respectfully represents that and are minor children of, deceased, and are without a guardian; that the said minor children are entitled to real and personal estate to the value of \$...., according to the best information and belief of your applicant.

To the end, therefore, that the estate of said minor orphans may be preserved and managed according to law, your applicant prays that letters of guardianship may be issued to him, or such other person as the court may think best for the interest of the said minor orphans.

This ... day of, 19...

North Carolina, county.

....., being duly sworn, says that he is acquainted with the real and personal estate belonging to the above-named children of, deceased; that to the best of his knowledge, information and belief, the

value of said estate is about \$....; and the value of the rents and profits of the real estate is about \$.... per annum.

Sworn before me, this ..day of...., 19..

....., Clerk Superior Court.

No. 313.—Petition for writ of habeas corpus.

State of North Carolina, county.

In the matter of }
..... } Petition for writ of habeas corpus.

To the Honorable....., one of the superior court judges
of the state of North Carolina:

Your petitioner,, respectfully sheweth to your honor the following facts:

1. That your petitioner is imprisoned and restrained of his liberty in the common jail ofcounty, in....., N. C., by....., the sheriff ofcounty.

2. That the cause or pretence of such imprisonment or restraint, according to the knowledge and belief of the petitioner is..... (If the imprisonment is by virtue of any warrant or other process, a copy thereof shall be annexed, or it shall be made to appear that a copy thereof has been demanded and refused, or that for some sufficient reason a demand for such copy could not be made.)

3. That the said imprisonment and restraint is illegal for that (here state wherein the illegality consists); and that the legality of the said imprisonment and restraint has not been already adjudged upon a prior writ of habeas corpus to the knowledge or belief of your petitioner.

Wherefore, your petitioner prays your Honor to grant to him the writ of habeas corpus, to be directed to the said....., sheriff of..... county, requiring him to bring before your honor the body of your petitioner, with the cause of his imprisonment and restraint, that the same may be inquired into, and relief may be afforded to your petitioner.

....., Petitioner.
by....., Attorney.

....., being duly sworn deposes and says that the foregoing petition is true to his own knowledge, except as to those matters stated on information and belief, and as to those matters he believes it to be true.

Subscribed and sworn before me this ..day of...., 19..

.....

No. 314.—Writ of habeas corpus.

State of North Carolina,county.

In the matter of }
..... } Writ of habeas corpus.

State of North Carolina, to, sheriff of county—greeting:

We command you that the body of, by whatever name he may be called, in your prison and under your custody detained, as it is said, together with the day and cause of his taking and detention, you have before me,, one of the judges of the superior courts of the state of North Carolina, at the court-house in, immediately after the receipt of this writ, to do and receive all and singular such things as shall then and there be considered of him in this behalf. And have you then and there this writ.

Witness my hand, this ... day of, 19...

.....
Judge of the Judicial District of North Carolina.

No. 315.—Lease for mining purposes.

North Carolina, county.

This agreement, made this ... day of, 19.., between A B, of the aforesaid county and state, of the first part, and C D, of the city and state of New York, of the second part, witnesseth: That the party of the first part, in consideration of the agreements hereinafter contained, on the part of the party of the second part to be performed, hereby bargains, leases and grants to the party of the second part, and his heirs and assigns, for the period of six years from the date of this agreement, the following described real property, in the county of, state of, to-wit: (Here describe land.) To have and to hold the said lands to him, the said C D, his heirs and assigns, for the aforesaid period of six years, upon a compliance with the conditions of this instrument, for the purpose and with the right to use said lands to dig, quarry, search for and obtain any kind of minerals, metals or fossils, and to conduct the same to any extent the said party of the second part may desire. And it is hereby agreed between the parties to this agreement that the party of the second part is to have the use and control of any or all the buildings on the aforesaid lands for conducting the said mining operations during the continuance of the lease and to keep the same in as good condition as when received, unavoidable accidents excepted. And it is also agreed by party of the second part that no unnecessary damage is to be done to the lands herein leased during the continuance of said lease; but the said party of the second part shall have right to take from said lands any wood or timber necessary to carry on the said mining operations and to repair the buildings on the lands herein leased. The said party of the second part hereby agrees to pay said party of the first part, his heirs or assigns, an annual rental of \$... for the use of said lands for the aforesaid term of years, payable each year in four quarterly payments, the first payment to be made on the ... day of, 19.., and all subsequent payments to be made every three calendar months from said date.

But it is expressly agreed that unless mineral or fossil material of practical value for mining purposes shall be found within two years from the date hereof, this lease may be terminated by the lessee at any time thereafter, on three months' notice to lessor.

Witness our hands and seals, the day and year first above written.

A B. (Seal.)

C D. (Seal.)

No. 316.—Lease of a house and lot.

North Carolina, county.

This agreement, made this ... day of, 19.., between A B, party of the first part, and C D, party of the second part, both of the county and state aforesaid, witnesseth: That the said party of the first part, in consideration of the agreements and covenants hereinafter mentioned, to be fulfilled by the said party of the second part, doth hereby demise and lease to the said party of the second part, and his heirs and assigns, for a period of five years, to commence from the date of this agreement, a certain lot of land in the city of, N. C., and more particularly described as follows: (Here describe said lot.) To have and to hold the same, and the privileges and appurtenances thereunto in anywise appertaining, to the said lessee and his heirs and assigns, for the said period of five years, upon the following terms and conditions: The annual rent during said term shall be \$..., which the lessee agrees to pay in quarterly payments of \$..., the first payment to be made on the ... day of, 19.., and all subsequent payments to be made every three calendar months from said date.

The lessor agrees that the lessee shall enjoy said premises during said term free from the adverse claims of any person. And the lessee agrees to make no unlawful or offensive use of the premises, to pay all taxes and assessments that shall be levied upon the same, to keep the premises in good repair, and deliver up the same at the end of the term in good order and condition, fire and other unavoidable accidents excepted. If the building should be destroyed or rendered unfit for use by fire or other casualty during said term, this lease shall thereupon terminate. If the said lessee shall neglect to make any payment of rent when due, or to pay any tax or assessment, or shall neglect to perform any condition herein on his part for the term of days after said lessor shall have given him notice of such neglect, said lessor may enter the premises and expel said lessee therefrom without prejudice to other remedies. Notice to quit possession and every other formality is hereby expressly waived in case of default.

Witness our hands and seals, this ... day of, 19...

Witness:..... (Seal.)
..... (Seal.)

No. 317.—Lease of farm.

North Carolina,county.

This indenture, made this ... day of, 19..., between A B, party of the first part, and C D, party of the second part, both of the county and state aforesaid, witnesseth:

That the party of the first part hereby demises, leases and farm-lets to C D and his heirs and assigns all that farm or tract of land situate in township, county, North Carolina, and more particularly described as follows: (Here insert boundaries and description.) To have and to hold the said farm or tract of land and the privileges and appurtenances thereunto appertaining, to him, the said party of the second part, and his heirs and assigns, for the term of five years from the ... day of, 19..., and no longer, unless a written agreement is entered into between the parties hereto.

The said party of the second part is to pay as rent for the said tract of land or farm, together with the barns, buildings, etc., one-fourth of all the products or crops raised upon the aforesaid lands, and no part of said crops is to be removed from said land without the consent of the lessor until said rent has been paid; and the crops raised on said lands are to be properly harvested and gathered by the lessee as soon as matured, and thereupon the party of the second part hereby agrees to pay and deliver said rent at the residence of the party of the first part.

Said party of the second part agrees that he will manage and keep the lands, buildings and fences belonging to the aforesaid farm in as good condition as they are at the date of this indenture, unavoidable accidents excepted; that he will not suffer any waste thereof, nor underlet the same, or any part thereof, without the consent of the lessor in writing; that he will pay all taxes levied upon said lands during said term; that he will deliver up the possession of the said premises at the end of said term, or the earlier termination of this lease, in as good order and condition as the same are now in, unavoidable accidents as aforesaid and reasonable wear and tear to buildings excepted. But it is expressly understood that the party of the second part shall have right to cut and use so much of the timber on said land as may be necessary for his own domestic use, and for properly repairing the fences belonging to said farm.

Witness our hands and seals, the day and year above written.

A B. (Seal.)
C D. (Seal.)

Executed in the presence of

No. 318.—Surrender of lease.

North Carolina, county.

In consideration of one dollar to me paid by A B, I do hereby surrender to the lessor within written lease of the premises therein mentioned, and all my estate in and to said premises yet unexpired, which premises are free from any incumbrances through me. To have and to hold the same to the said lessor and his assigns forever.

Witness my hand and seal, this ... day of, 19...

C D. (Seal.)

Executed in the presence of

No. 319.—Assignment of lease by lessee.

North Carolina, county.

I, C D, of said county and state, in consideration of \$...., paid me by E F, of said county and state, do hereby assign to the said E F the lease within written, and all my estate in the premises thereby demised. To have and to hold the same to the said E F, and his heirs and assigns, from the ... day of, 19.., for the remainder of the term of five years therein named. And I, the said E F, agree with the said C D that I will pay the rents and perform the covenants and conditions in said lease, and if I fail to pay the rents or perform any covenant in said lease, then, at the option of the said C D, this assignment shall be void.

Witness our hands and seals, this ... day of, 19...

..... C D. (Seal.)

..... E F. (Seal.)

Signed and sealed in the presence of

No. 320.—Complaint for removal of crop.

North Carolina, county, township.

State	}	Before, justice of the peace.
vs.		
C..... D.....		

A B, being duly sworn, says: That on the ... day of, 19.., as landlord he rented a parcel of land in township, county, adjoining the lands of L M, N O, and others, to C D, to cultivate during the year 19..; and the said C D agreed to pay the affiant as rent for said lands for said year one-fourth of the crops of every kind raised upon said lands for said year; that the said C D has failed to pay said rent, or any part thereof (or in full), and the same is now due and unpaid; that the said C D, on or about the ... day of, 19.., did unlawfully and wilfully remove from said lands a part of the crops raised upon said lands during the said year before satisfying all the liens held by the said lessor or his assigns, without having given any notice to the lessor or his agent of the intended removal of said crops, and the same being contrary to his will and desire and without his consent, against the form of the statute in such cases made and provided and against the peace and dignity of the state.

A B, Affiant.

Sworn to and subscribed before me, this ... day of, 19...

....., Justice of the Peace.

Note.—The justice will issue his warrant, with the affidavit above, or the substance thereof, appended, against the defendant; and if it appears that the complainant has just grounds of complaint, will bind the defendant to the superior court.—Ed.

No. 321.—Complaint for injury to real property.

North Carolina, county, township.

State and A B	} Before, justice of the peace.
vs.	
C..... D.....	

A B, landlord, being duly sworn, deposes and says: That on or about the ... day of, 19.., in township, county, C D did, unlawfully and wilfully and maliciously, deface, injure and damage a certain tenement house belonging to the said affiant, the said house being situate on street, city of, N. C., between and streets, by breaking down one of the doors of said tenement house, with an axe, and removing the same from the premises, to the great injury of the affiant, and to his damage in the sum of \$...., and contrary to the statute in such cases made and provided, and against the peace and dignity of the state. A B, Affiant.

Sworn to and subscribed before me, this ... day of, 19..
....., Justice of the Peace.

Note.—The justice will issue his warrant as in preceding case.—Ed.

Note.—See sections 632 and 641 infra.

No. 322.—Plaintiff's affidavit in ejectment.

North Carolina, county.

A B, Plaintiff,	} Summary proceedings in ejectment.
vs.	
C D, Defendant.	

The plaintiff (his agent or attorney) maketh oath that the defendant entered into the possession of a piece of land in said county (describe the land) as a lessee of the plaintiff, (or as lessee of E F, who, after the making of the lease, assigned his estate to the plaintiff, or otherwise, as the fact may be,) that the term of the defendant expired on the ... day of, 19.., (or that his estate has ceased by non-payment of rent, or otherwise, as the fact may be,) that the plaintiff has demanded the possession of the premises of the defendant, who refused to surrender it, but holds over; that the estate of the plaintiff is still subsisting, and the plaintiff asks to be put in possession of the premises.

The plaintiff claims dollars for rent of the premises from the ... day of, 19.., to the ... day of, 19..; and also dollars for the occupation of the premises since the ... day of, 19.., to the date hereof. A B, Plaintiff.

Subscribed and sworn to before me, this ... day of, 19..
J K, J. P.

No. 323.—Summons to be issued by the justice.

North Carolina, county.

A B, Plaintiff,	} Summary proceedings in ejectment.
vs.	
C D, Defendant.	

A B, (his agent or attorney,) having made and subscribed before me the oath, a copy of which is annexed, you are required to appear before me on the ... day of, 19.., at, then and there to answer the complaint; otherwise judgment will be given that you be removed from the possession of the premises.

Witness my hand and seal, this ... day of, 19..
J K, J. P. (Seal.)

To C D, Defendant.

The justice attaches the oath of the plaintiff to the summons and delivers them, and a copy of both of them, to the officer, and makes the following entry on his docket, or varies it according to the facts:

No. 324.—Docket entry made by justice.

A B, Plaintiff, { Summary proceedings in ejectment for (describe
 vs. the premises).
 C D, Defendant. }

Oath of plaintiff (his agent or attorney) filed on the day of, 19....

Plaintiff claims dollars for rent, from to, and dollars for occupation from to

Summons issued the ... day of, 19.., to, constable (or sheriff, as the case may be).

The officer serves the summons and returns it to the justice with the oath of the plaintiff, and with his return indorsed.

No. 325.—Return of officer.

On this day I served the within summons on the defendant, C D, by delivering him a copy thereof, and of the oath of A B, annexed, (or by leaving a copy thereof and the oath of A B at the usual place of residence of the defendant C D, with an adult found there), (or the said C D not being found in my county, and having no usual or last place of residence therein) (or no adult person being found at his usual or last place of residence, by posting a copy of the summons and of the oath of A B, annexed, on a conspicuous part of the premises claimed).
 N M, Constable.

This ... day of, 19...

No. 326.—Record to be entered by justice on his docket.

A B, Plaintiff, { Summary proceedings in ejectment.
 vs.
 C D, Defendant. }

It appearing that the summons, with a copy of the oath of the plaintiff, (his agent or attorney) was duly served on defendant*; and whereas, the defendant fails to appear (or admits the allegations of the plaintiff), I adjudge that the defendant be removed from, and the plaintiff put in possession of, the premises described in the oath of the plaintiff. I also adjudge that the plaintiff recover of defendant dollars, for rent, from the ... day of, 19.., to the ... day of, 19.., and dollars for damages for occupation of the premises from the ... day of, 19.., to this day, and dollars for his costs; the ... day of, 19...

If the defendant admit part of the allegations of plaintiff, but not all, the judgment must be varied accordingly; for example, follow the foregoing to the *, and then proceed:

And whereas, the defendant appears and admits the first and second allegations of the plaintiff, and denies the residue; and whereas, both parties waived a trial by jury, I heard evidence upon the matters in issue, and find (here state the finding on the matters in issue separately).

Supposing the findings are for the plaintiff, the record would proceed:

I therefore adjudge that the defendant (and so on from *).

If either party shall demand a jury, the record shall proceed from * as follows:

And whereas, the plaintiff (or defendant, as the case may be) demanded a trial of the issues joined by a jury, I caused a jury to be summoned, to-wit: (here give the names of the jurors summoned), from whom the following jury was duly impaneled, to-wit: (here state the names of the six jurors impaneled), who find (here state the verdict of the jury; if they find all the issues for the plaintiff, say so; if any particular issues, say so; also state the sums assessed by them for rent and for occupation to trial). Therefore, I adjudge, etc. (as in form No. 326 from *).

If either party appeals, the justice will enter on his docket as follows, altering the entry according to the facts:

No. 327.—Record when an appeal is prayed.

From the foregoing judgment the plaintiff (or defendant, as the case may be) prayed an appeal to the next superior court of said county, which is allowed.

No. 328.—Bond to be given by defendant to suspend execution.

We, the undersigned, and, acknowledge ourselves indebted to in the sum of dollars.

Witness our hands and seals, this the ... day of, A. D. 19...

Whereas, on the ... day of, A. D. 19..., before, a justice of the peace for county, A B recovered a judgment against C D for and for dollars damages for the detention of said real estate from the ... day of, A. D. 19..., to the ... day of, A. D. 19...; and whereas, the said ha.. prayed an appeal to the superior court from said judgment, and also asks that execution on said judgment shall be suspended; now, therefore, if the said shall pay any judgment which, in this or in any other action, the said may recover for the rent of said premises, and for damages for detention thereof, then this obligation shall be void, otherwise to remain in full force and virtue.

..... (Seal.)

..... (Seal.)

..... (Seal.)

Taken, subscribed and acknowledged before me, this ... day of, 19... .., Justice of the Peace.

Note.—The sureties are to justify as on other undertakings.

No. 329.—Execution on a judgment for the plaintiff.

A B, Plaintiff, }
vs. } county.
C D, Defendant. }

The state of North Carolina, to any lawful officer

of said county—Greeting:

You are hereby commanded to remove C D from, and put A B in, the possession of a certain piece of land (here describe it as in the oath of plaintiff). You shall also make out of the goods and chattels, lands and tenements of said defendant, dollars, with interest from the ... day of, 19..., to the day of payment, which the plaintiff lately recovered of the defendant as rent and damages, and the further sum of dollars as costs in said action. Return this writ, with a statement of your proceedings thereon, before me. (State when and where according to general law respecting justices' executions).

Witness my hand and seal, this ... day of, 19...

....., J. P. (Seal.)

No. 330.—Stay of execution.

The state of North Carolina, to any officer having an execution in favor of A B, plaintiff, vs. C D, defendant, in a summary proceeding in ejectment, signed by, a justice of the peace:

The defendant, having given bond to me, as required by law, on his appeal to the superior court of county, in the above case, you will stay further proceedings upon said execution and immediately return the same to me, with a statement of your action under it.

Witness my hand and seal, this ... day of, 19...

....., J. P. (Seal.)

No. 331.—Certificate of justice on return of the appeal to the superior court.

The annexed are the original oath, summons and other papers, and a copy of the record of the proceedings in the case of a summary proceeding in ejectment, A B, plaintiff, vs. C D, defendant.

....., Justice of the Peace. (Seal.)

[Here state all the costs, to whom paid or due, and by whom.]

[All the papers must be attached.]

No. 332.—Form of lien.

North Carolina, county.

In the office of the clerk of the superior court.

....., claimant	} Notice and claim of lien.
vs.	
....., owner	

To all whom it may concern:

Take notice, that, the claimant above named, hereby claims a mechanic's, laborer's, and material-furnisher's lien against the above-named and upon the property of the said hereinafter fully described, under, by virtue of, and pursuant to the constitution and laws of the state of North Carolina. And the said claimant shows:

1. The name and residence of the person who claims, gives notice of, and files this lien is

2. The name of the person against whom and upon whose property this lien is hereby asserted, claimed and filed is

3. The property of said, upon which this lien is claimed, asserted and filed is in (and here give a full and particular description of the property).

4. The labor and material on account of which this lien is claimed and filed were furnished and performed to and for the said by said claimant in county, North Carolina, under and pursuant to the terms of an agreement, the same being an entire and indivisible contract made and entered into by the said claimant and said on the .. day of, 19.., the said being then the owner of the said property hereinbefore described, by the terms whereof the said claimant contracted and agreed to (give substance of claimant's agreement), and the said owner contracted and agreed to pay, etc., (give substance of owner's agreement). A full and detailed statement and schedule of said labor and materials so furnished and performed, with the dates and values thereof is hereto attached, marked exhibit "A," and made a part hereof. And all said labor was performed upon, and all said materials were used in, the building of said dwelling-house upon said land, pursuant to said contract and agreement. The said claimant began to perform said labor on the ... day of, 19.., and finished the same on the ... day of, 19..; and began to furnish the said materials on the ... day of, 19.., and finished the same on the ... day of, 19..

5. The amount of the debt from said owner to said claimant under the terms of the said contract for which this lien is filed is \$.....

....., Claimant.

....., being duly sworn, deposes and says that the foregoing notice and claim of lien is true, except as to matters therein stated upon information and belief, and as to those matters he believes it to be true.

Sworn and subscribed to before me, this ... day of, 19..

Note.—The foregoing form can be easily changed to fit cases in which the lien is to be filed for labor only, or for material only, and cases in which the lien is claimed upon personal property,—Ed.

No. 333.—Entry of clerk on notice of lien.

When the notice of lien is filed, the clerk should endorse thereon the following:

Notice of lien. vs. Filed in the office of the clerk of the superior court of county, this ... day of, 19.., at ... o'clock ... m., and entered in the lien docket of said court at page ..., and duly indexed as required by law., C. S. C.

No. 334.—Summons in action to enforce lien.

North Carolina, county, township.

.....
vs. } Before, justice of the peace.
.....

State of North Carolina, to any constable or other
lawful officer of county—greeting:

You are hereby commanded to summon to appear before, justice of the peace, at his office in township, county, on the ... day of, 19.., at ... o'clock, ... m., to answer the complaint of for the nonpayment of the sum of \$.... and interest on said sum from the ... day of, 19.., until paid, due by contract for work and labor done and material furnished by plaintiff for defendant for the building of a dwelling-house upon a certain lot of the defendant's land in township, county, which is fully described in plaintiff's notice and claim of lien, which was filed on the ... day of, 19.., in the office of the clerk of the superior court of county, to secure the payment of the said amount, and of which notice and claim of lien a certified copy is filed in this action.

Herein fail not, and of this summons make due return.

Witness my hand, this ... day of, 19..

....., Justice of the Peace.

No. 335.—Judgment to enforce lien.

(Same title as in preceding form.)

This action coming on to be heard, and being heard, and it appearing to the satisfaction of the court that the defendant is indebted to the plaintiff in the sum of \$...., with interest thereon from the ... day of, 19.., for work and labor done and material furnished by plaintiff to defendant, under a contract between said parties, by which plaintiff contracted to build for defendant a dwelling-house upon the land hereinafter described; and that plaintiff, on the ... day of, 19.., duly filed a notice and claim of lien in the office of the clerk of the superior court of county, which was duly entered in the lien docket of said court on page; and of which a duly certified copy is filed in this court, made a part of the plaintiff's complaint, and introduced as evidence upon the trial of the action; and that the said labor and material for the price of which this action is brought were performed and furnished in building said dwelling-house on said land; and that the performance and furnishing of the said labor and material was begun on the ... day of, 19.., and finished on the ... day of, 19..; and that this action was begun on the ... day of, 19..:

Hereupon it is considered and adjudged by the court that the plaintiff recover of the defendant the sum of \$...., with interest on \$.... from the ... day of, 19.., until paid, and \$...., costs in this action expended, and \$...., costs of filing said lien; and that this judgment is a mechanic's lien upon the real estate of the defendant, and the improvements thereon, described in said notice and claim of lien and being described as follows: (Here give description as in

notice and claim of lien.) And it is further considered and adjudged that said lien attached to said real estate on the ... day of, 19.., the day on which plaintiff began to perform said labor and to furnish said material; and that plaintiff is entitled to have said real estate sold under execution, to be issued by the superior court of county, pursuant to statute for the satisfaction of this judgment. And to that end it is ordered that a duly certified copy and transcript of this judgment be filed in the office of the clerk of the superior court of county, that it may be docketed in said court and process issued thereon according to law.

This ... day of, 19...

....., Justice of the Peace.

No. 336.—Execution to enforce lien.

North Carolina, county—In the superior court.

The state of North Carolina, to the sheriff of county—greeting:

Whereas, on the ... day of, 19..,, a justice of the peace of county, in an action wherein was plaintiff and was defendant, rendered judgment that the said recover of the said the sum of \$...., with interest on \$.... from the ... day of, 19.., and \$.... costs; and that said judgment was a mechanic's lien upon the real estate of the said defendant, and the improvements thereon, described in a certain notice and claim of lien filed in the office of the clerk of the superior court of county on the ... day of, 19.., and duly entered in the lien docket of said court on page, the said real estate being hereinafter fully described; and that said lien attached to said real estate and the improvements thereon on the ... day of, 19..; and that the said is entitled to have said real estate sold under execution for the satisfaction of said judgment and lien; and whereas, a duly certified copy and transcript of the said judgment was duly filed in the office of the clerk of the superior court of county, as appears from the judgment roll No. in said office, and said judgment was duly docketed in said office on the ... day of, 19..; and whereas, there is now due on said judgment the sum of \$...., with interest on \$.... from the .. day of, 19.., until paid, and \$.... costs and disbursements in said action expended, wherefor said is liable:

You are therefore required and commanded to expose to public sale to the highest bidder for cash, and sell or cause to be sold, that certain lot, parcel or tract of land in your county, being the lands and tenements of the said, known, bounded and described as follows, viz: (Here insert description just as it appears in the notice of lien and justice's judgment, and add): It being the land and premises described in the aforesaid notice and claim of lien and judgment; and all the right, title and interest which said defendant had in said land and premises at the time said lien of the plaintiff attached thereto, to-wit, on the ... day of, 19.., or at any time thereafter, or so much of said land and premises as may be necessary for the satisfaction of said judgment and this execution; which sale you shall make before this execution shall extend to the general property of the said defendant.

And if the proceeds of the sale of the aforesaid lands and premises shall prove insufficient to satisfy said judgment and costs and this execution, then you are commanded to satisfy such deficiency on said judgment and this execution out of the personal property of the said defendant within your county; or, if sufficient personal property can not be found, then out of the real property in your county, other than that hereinbefore directed to be sold, belonging to said defendant on the day when said judgment was so docketed in your county, or at any

time thereafter, in whose hands soever the same may be; and have you this execution, together with the money, before our said court, at the court-house in, on the Monday after the Monday in next, then and there to render the same to the plaintiff.

Issued the ... day of, 19.....
Clerk of the Superior Court of County.

No. 337.—Lien bond and chattel mortgage.

North Carolina, County.

Whereas, has this day agreed to make advances of supplies and money to from time to time as required, during the year 19.., to an amount not to exceed \$...., to be by expended in the cultivation of a crop during said year, upon the following described land: (Here describe land.)

Now, therefore, in consideration of the premises, do promise to pay the full amount advanced to, on or before the ... day of, 19.., and do hereby give to the said a lien upon all the crops which may be made by upon said land during said year, to the extent of such advances, in accordance with the statute in such case made and provided. And if fail to pay the amount so advanced by the time specified, the said shall have power to take possession of said crop and sell the same, the proceeds to be applied to the payment of said advances, and the surplus, if any, to be paid to

And for the further securing of said advances to be made to by said, do hereby sell and convey to these articles of personal property: (Here describe property to be mortgaged.)

But on this special trust, that if shall fail to pay the full amount of said advances, made in pursuance of said agreement, on or before the ... day of, A. D. 19.., may take possession of and sell said property, or so much thereof as may be necessary, for cash, at public auction, first giving notice of the time and place of sale by advertisement posted at some conspicuous place at the court-house door and at three other public places in county for thirty days immediately preceding such sale, and also published for four weeks in some newspaper published in county, and apply the proceeds of such sale to the payment of the amount then due on account of said advances, and pay any surplus to

Witness hands and seals, this ... day of, 19...
..... (Seal.)
..... (Seal.)
Witness:..... (Seal.)

....., the owner.. of the land described in the foregoing instrument, do hereby agree with the said, in consideration of the advances to be made to by, that the above-given lien shall have priority to the extent of the advances made by to said during the year 19.., over any lien to which may be entitled upon the crop to be made by said on said land during said year.
..... (Seal.)

Witness:..... (Seal.)

No. 338.—Lien bond, including old debt.

North Carolina, county.

Whereas, ha.. this day agreed to make advances of supplies and money to from time to time as required, during the year 19.., to an amount not to exceed \$...., to be by expended in the cultivation of a crop during said year, upon the following described land: (Here describe lands.)

Now, therefore, in consideration of the premises do.. promise to pay the full amount advanced to on or before the ... day of, 19.., and do.. hereby give to the said a lien upon all the crops which may be made by upon said land, during said year, to the extent of such advances, in accordance with the statute in such case made and provided. And if fail.. to pay the amount so advanced, by the time specified, said shall have power to take possession of said crop and sell the same, the proceeds to be applied to the payment of said advances and the surplus, if any, to be paid to

And whereas, the said is justly indebted to the said by note dated the ... day of, 19.., in the sum of \$...., for value received, in addition to the amount above agreed to be advanced during the year 19.., and is desirous of securing the payment of the said note. Now, therefore, in order to secure the payment of the said note, and also to further secure the payment of the advance to be made as before mentioned, the said do.. hereby sell and convey to the said all the crops which may be made by during said year 19.. upon the above-described lands, and also the following described articles of personal property, to-wit: (Here describe property to be mortgaged.)

But on this special trust, that if shall fail to pay the full amount of said advances made in pursuance of this agreement, and the note above mentioned, on or before the ... day of, 19.., may take into possession and sell said crops and personal property, or so much thereof as may be necessary, for cash at public auction, first giving notice of the time and place of sale by advertisement posted at some conspicuous place at the court-house door and at three other public places in county for thirty days immediately preceding such sale, and also published for four weeks in some newspaper published in county, and apply the proceeds of such sale to the payment of the amount then due on account of said note and advances, and pay any surplus to

Witness hands and seals, this ... day of, 19...

..... (Seal.)

..... (Seal.)

Witness:.....

..... (Seal.)

(See *Weil v. Flowers*, 109—212.)

No. 339.—Short form for agricultural lien and chattel mortgage—Laws 1899, chapter 17.

Applies to Alamance, Alleghany, Ashe, Beaufort, Bladen, Brunswick, Buncombe, Burke, Carteret, Caswell, Catawba, Chowan, Craven, Cumberland, Davie, Duplin, Edgecombe, Forsyth, Gaston, Gates, Granville, Greene, Harnett, Jones, Lenoir, Lincoln, Martin, McDowell, Moore, Nash, New Hanover, Onslow, Pender, Perquimans, Person, Pitt, Polk, Richmond, Robeson, Rockingham, Rowan, Rutherford, Sampson, Vance, Washington, Watauga, Wayne, Wilson.]

State of North Carolina, county.

Section 1. Whereas, I,, am engaged in cultivating the soil, and ha.. this day agreed to make advances to me of supplies to the value of dollars, and such further sums as said may deem necessary, not to exceed in all dollars, during the year 19.., to enable me to make a crop during the said year on land in said state and county, township, adjoining the lands of, and being the same Now, therefore, in consideration of the premises, I do covenant with that I will properly cultivate and harvest on said lands acres in cotton, acres in corn, acres in tobacco, and acres in; that there is no lien on said crop; and to secure the payment of the amount advanced to me, I do hereby give a lien as provided in section 2052 of the Revisal, on all crops which may be raised on said land during the year 19.., and if by 19.., I fail to pay the amount advanced, and also fail to

deliver to all such crops at place of business, may close this lien as provided in Section 2054 of the Revisal, or otherwise, and receive from the proceeds the amount due for advances, together with all costs and expenses of closing the same, and the surplus, if any, pay to.....

Section 2. And to further secure payment of the amount that may be advanced, and also the sum of dollars, now due..... by note dated, 19.., with interest from I convey to all of the above crops, and also the following articles of personal property:..... all of which is my own and free from encumbrance, and if by, 19.. I fail to pay the amount due ..h..... may sell the property conveyed in this section, as provided by law for sale under chattel mortgages, and from the proceeds retain all amounts provided for in Section 1.

Witness my hand and seal, this.. day of...., 19..

Witness:..... (Seal.)

..... the owner of the land described in the foregoing instrument, do.. hereby agree with the said, in consideration of the advances to be made to by, that the above-given lien shall have priority to the extent of the advances made by toduring the year 19.., over any lien to which I may be entitled upon the crops to be made by him on said lands during said year.

Witness:..... (Seal.)

[Fees on this form are as follows: Probating, 10 cents; registration, 30 cents.]

No. 340.—Agricultural lien and chattel mortgage for advances and to secure pre-existing debt.

[Applies to Alamance, Alleghany, Ashe, Beaufort, Bladen, Brunswick, Bunscombe, Burke, Cabarrus, Carteret, Caswell, Catawba, Chowan, Columbus, Craven, Cumberland, Davie, Davidson, Duplin, Durham, Edgecombe, Franklin, Forsyth, Gaston, Gates, Granville, Halifax, Harnett, Hertford, Hyde, Iredell, Johnston, Jones, Lenoir, Lincoln, Martin, McDowell, Mecklenburg, Moore, Nash, New Hanover, Northampton, Onslow, Pender, Pamlico, Person, Pitt, Polk, Richmond, Robeson, Rockingham, Rowan, Rutherford, Sampson, Scotland, Transylvania, Tyrrell, Union, Vance, Washington, Wake, Wayne and Wilson.—Section 2055, Revisal of 1905.]

North Carolina, county.

Whereas, ha.. agreed to make advances to for the purpose of enabling said to cultivate the lands herein-after described, during the year 19.., the amount of said advances not to exceed dollars;

And Whereas, said is indebted to said in the further sum of dollars, now due:

Now, therefore, in order to secure the payment of the same, the said do.. hereby convey to said all the crops of every description which may be raised during the year 19.. on the following lands in county, North Carolina, township, adjoining the lands of and also the following other property, viz:

And if by the ... day of, 19.. said fail.. to pay said indebtedness, then said may foreclose this lien, as provided in section two thousand and fifty-four of the Revisal of 1905, or otherwise, and may sell said crops and other property, after ten days notice, posted at the court house door and three other public places in said county, and apply the proceeds to the payment of said indebtedness and all costs and expenses of executing this conveyance, and pay the surplus to said

And the said hereby represents that said crops and other property are the absolute property of and free from incumbrance.

Witness hand.. and seal... this the ..day of, 19..

Witness:..... (Seal.)

Waiver of landlord's lien.

....., owner of lands described in the foregoing instrument, in consideration of the advances to be made as therein provided, do.. hereby agree to waive and release my lien as landlord upon said crops, to the extent of said advances made to said.....

This the...day of..... 19..

Witness:..... (Seal.)

[Fees on this form are as follows: Probating, 10 cents; Registration, 10 cents.]

Note.—For special form applicable to Wake county, see Laws 1899, ch. 247, and Laws 1907, ch. 843.

No. 341.—Affidavit for warrant to enforce lien on crops.

North Carolina.county.

A..... B.....	} In the superior court, before the clerk.
vs.	
C..... D.....	

On this ... day of, 19.., before the undersigned, clerk of the superior court of county, personally appeared who, after being duly sworn, makes oath that is indebted to him in the sum of \$.... for money and supplies advanced to the said during the present year, for the purpose of enabling him, the said, to cultivate and gather his crops of said year, no part of which has been paid, and that \$.... of said indebtedness is now due; that he has a lien on the crops of said produced during the present year, in said county, on the lands described as follows (here describe the lands), and that said lien was executed by him on the ... day of, 19... and duly registered in the register's office of said county the .. day of 19... to the extent of \$...., as a security for the payment of said claim; that from information received, he is satisfied the said is about to sell or dispose of said crop (or in any other way is about to defeat the lien hereinbefore provided for) so as to defeat the said lien.

Sworn to and subscribed before me, this ... day of, 19...

....., Clerk Superior Court.

No. 342.—Warrant to seize crop.

(Title as in No. 341.)

State of North Carolina, to the sheriff of county—greeting:

It appearing to the undersigned by the affidavit of that is indebted to the said in the sum of \$.... for supplies and advancements made by him to said during the year 19... for the purpose of enabling the said to cultivate and gather his crops of said year; that the said has a lien on the crops raised by the said during the said year, in said county, to secure the payment of the same, said crops being produced upon the lands described as follows (description), and that said lien was executed the ... day of, 19.., and duly registered the ... day of, 19... in the register's office of said county (the amount now due by said lien being \$....); and that the said is about to sell or dispose of said crops, so as to defeat said lien, as he is informed and believes.

You are therefore hereby commanded to seize said crops, wherever they may be found in your county, and, after due notice, sell the same for cash and pay over the net proceeds to the said, or so much thereof as may be sufficient to discharge said lien and the cost of these proceedings; and return you this warrant within sixty days from the date hereof.

Dated this ... day of, 19...

....., Clerk Superior Court.

No. 343.—Notice of sale of crop.

(Title as in No. 341.)

By virtue of an order of the superior court of county, in special proceedings entitled A B vs. C D, I will sell to the highest bidder, for cash, at the residence of, in township, on the ... day of, 19.., at 12 o'clock m., in order to satisfy the claim of the said plaintiff for advancements made by him to said defendant during the year 19.., the following-described personal property, to-wit: (Here describe crops to be sold.)

This ... day of, 19... .., Sheriff.

No. 344.—Notice to sheriff seizing crop.

(Title as in No. 341.)

To, sheriff of county:

Take notice in the above-entitled action that the order of the superior court of said county in said cause, by virtue of which the crops of the undersigned were (or are to be) sold by you on the ... day of 19.., was improperly made, and the sale of said crops was unjust; that the undersigned defendant in said cause is not, and was not at the time of said sale, justly due the plaintiff therein any amount, as appears by affidavit hereto attached and made a part hereof; and the said defendant hereby demands that you hold the proceeds of said sale subject to the decision of the superior court of county at its next term, and that you make known the contents of this notice to the clerk of said court.

C D, Defendant.

This ... day of, 19...

No. 345.—Notice of sub-contractor.

North Carolina, county.

A..... B..... }
vs. } Notice.
C..... D..... }

To C..... D....., owner:

You will take notice that C D, contractor, now building a house for you on street, in the city of, is justly indebted to the undersigned for work and labor done (or materials furnished, as the case may be) on said house, to the amount of \$...., as will appear by a statement herewith sent; and you will further take notice that the undersigned claims his lien upon said house and the real estate upon which it is situate, for the aforesaid amount.

Dated this ... day of, 19... A B, Sub-contractor.

No. 346.—Marriage ceremony.

The minister or justice (addressing the company present): "We are here gathered together, in the sight of God and in the presence of each other, to join together this man and this woman in the holy bonds of matrimony, which is commended to be honorable among all men by the Apostle Paul, and is therefore not to be entered into unadvisedly or lightly, but reverently, discreetly, soberly, advisedly, and in the fear of God. Into this holy estate these two persons come now to be joined. If any person or persons can show just cause why they may not lawfully be joined together, let them now speak, or ever hereafter hold their peace."

(Then addressing the bride and groom): "I now require and charge you both, as you expect to answer at the day of judgment, when the secrets of all hearts shall be disclosed, that if either of you know of

any impediment why you may not be lawfully joined together in holy matrimony, that you do now confess it, for we be well assured that if any persons are joined together otherwise than as God's Word doth allow, their marriage is not lawful."

(Then addressing the man): "William, wilt thou have this woman to be thy wedded wife, to live together after God's ordinance in the holy estate of matrimony? Wilt thou love her, comfort her, honor her, and keep her, in sickness and in health; and, forsaking all others, wilt thou keep thyself unto her so long as you both shall live?" (The man shall answer,) "I will."

(Then addressing the woman): "Mary, wilt thou have this man to be thy wedded husband, to live together after God's ordinance in the holy estate of matrimony? Wilt thou obey him, serve him, love him, honor him, and keep him, in sickness and in health; and, forsaking all others, wilt thou keep thyself only unto him, so long as you both shall live?" (The woman shall answer,) "I will."

(Then addressing the company): "Forasmuch as this man and woman have covenanted together in holy wedlock, and have witnessed the same before God and this company, by authority in me vested by law, I do pronounce that they are man and wife, and what God hath joined together let no man put asunder."

No. 347.—Ante-nuptial contract.

North Carolina, county.

This agreement, made this ... day of, 19..., between E V, of the first part, C D of the second part, and G H of the third part, witnesseth: That whereas, a marriage is intended to be had between the parties of the first and third parts, and the said E V is possessed of certain real and personal property, to-wit: (here describe the property), which she is disposed, with the consent of said party of the third part, to transfer to said party of the second part in trust for her own proper use and benefit: Now, therefore, in consideration of the premises, and of one dollar paid by said C D to said E V, the said E V hereby assigns and transfers to the said C D all the personal property and effects above mentioned, and hereby grants and conveys to said C D the said real estate, to have and to hold the same, both real and personal, to him, the said C D, and to his executors and administrators, for the uses and purposes and upon the special trusts following, to-wit:

First. That until the solemnization of said marriage, the said C D shall permit the said E V to receive to her own use all the income, profits and dividends arising from said estate, and from any other estate which may be substituted therefor, as is hereinafter provided.

Second. That after the solemnization of said marriage, and during the coverture of said E V, said C D shall receive and collect the income, rents, profits and dividends of said estate, or of any other substituted estate, from time to time as the same shall be payable, and, after deduction of proper expenses, shall pay over the same, or so much thereof as she shall not direct to be added to the principal for the purposes of accumulation, to the said E V, upon her separate receipt therefor, and free from the control of her said husband or any other person.

Third. That in case of the death of the said E V, after the said marriage shall take effect, and during the life of her said husband, the said estate shall be re-conveyed, transferred and paid over by said trustee, to such persons as the said E V, by any writing subscribed by her, in the presence of two competent witnesses, shall appoint to take and receive the same; and in default of such appointment, so to be made by her, the same shall be transferred and paid, one-half to her husband, the said G H, and the other half to such persons as would be the legal

representatives of the said E V by the statute for the distribution of intestate estates: and, in case of the death of her said husband, before such estate shall be conveyed, transferred and paid over to him, then the whole to such legal representatives.

Fourth. If the said G H shall die before the said E V, all the property and estate then held in trust under this agreement shall be paid over, transferred, and conveyed back to the said E V, and until so paid over, transferred, and conveyed, said E V shall be permitted to receive and collect the rent, income and profits of the aforesaid property, for her own use.

Fifth. That the said C D hereby covenants with the said E V to sell and dispose of the property herein conveyed to him and invest the proceeds in other property, according to the written direction of the said E V, and the estate so purchased shall be held by said trustee upon the trusts declared by this agreement, and may be sold and the proceeds reinvested from time to time, in trust in manner aforesaid. And it is hereby declared that the purchaser of any of the estate held in trust aforesaid, shall not be bound to see to the application of said purchase money.

Sixth. That in case of the decease of said trustee, or his resignation of said trust, he, or his executors or administrators, shall convey, transfer, and pay over all the trust estate then held by him to such appointee as may be named in writing by said E V, and the said appointee shall have all the powers herein set forth and given to C D, and the receipt of such appointee shall be a complete discharge to said trustee, his executors and administrators; and, in like manner, other new trustees may, from time to time, be appointed, as occasion may require.

Seventh. And whereas, it has been understood and agreed by and between the parties hereto, that all property and estate, real and personal, which said E V may hereafter acquire or become entitled to, by her own earnings, by gift, devise, descent, distribution, or otherwise, should be transferred, conveyed and paid over to said trustee, and thereby be secured for the separate use of said E V, and thereby placed beyond the control or management of said G H, and be exempt from liabilities on account of his debts or obligations: Now, therefore, it is further agreed by G H, that he will, at any time during said coverture, upon written request of the said E V or said C D, unite with said E V in such transfer and conveyance as shall vest said property, so to be hereafter at any time acquired by said E V, or to which she may become entitled as aforesaid, in such person as may then be trustee, as hereinbefore is provided; to be by him held subject to the uses and purposes of said trust. And said G H hereby covenants and agrees to and with said E V, her heirs and assigns, and to and with said C D and his assigns, that he will warrant and defend said estate to said E V, to her separate use, and to said C D and his assigns, to the uses declared in this deed of trust, against the claims and demands of all persons claiming under, through or on account of him.

And said party of the second part hereby signifies his acceptance of said transfer and conveyance of the real and personal estate aforesaid; and agrees to hold and manage the same, and such other estate and property as may come to him by conveyance or otherwise, as herein provided, according to the provisions of this agreement.

And said G H hereby signifies his assent to the provisions of this agreement, and covenants with said C D and his successors in said trust, to permit said E V to receive the aforesaid rents, income and profits to her separate use, and freely to manage, invest and re-invest the same, and to dispose of the trust estate by will or appointment to such persons as she may prefer, and not to interfere with said trust estate, except in conformity with the provisions of this agreement.

In testimony whereof, the said parties have hereunto set their hands and seals, the day and year above written.

E V. (Seal.)

C D. (Seal.)

Executed in presence of

G H. (Seal.)

No. 348.—Labor Contract.

North Carolina, county.

It is this day agreed between and

1st. In consideration of the services hereinafter mentioned, the said is to pay to the said the sum of \$....., in monthly instalments of \$....., for the period of months, and of \$.... for the period of months, each payment to be made on the Saturday night succeeding the last day of each month; with the understanding, however, that one-third of each instalment of pay is to be withheld from the said until the full expiration of his period of service under this agreement.

2d. In consideration of the payments to be made as hereinbefore set forth, the said is to work faithfully and diligently as a farm hand on the of the said, or at such other place as he may require within a reasonable distance of said farm, for the period of months, beginning on the ... day of, 19..., and ending on the ... day of, 19...

Witness our hands and seals, this ... day of, 19...

Witness:..... (Seal.)

..... (Seal.)

No. 349.—Petition for Partition.

North Carolina, county—In the superior court, before clerk.

A..... B..... }
vs. } Petition for partition.
C..... D..... }

To the superior court of said county:

The petitioners complain and allege—

1. That they are tenants in common, and are seized in fee simple and are in possession of the following described lands, lying and being in the county and state aforesaid, adjoining the lands of and others, and bounded as follows, viz: (Here describe lands.)

2. That the interest of the petitioners in said lands is as follows, viz: (Here give interest of each.)

3. That the defendants (here give names of minors), are minors without any guardian.

4. That they desire to hold their shares in severalty.

Wherefore, your petitioners pray that you will appoint three commissioners to divide the same into equal shares, by proper metes and bounds, and to allot to each of your petitioners such share thereof as each is entitled to; and if an equal division can not otherwise be made, then to charge the more valuable dividends with such sums of money as they shall think necessary, to be paid to the dividends of inferior value, in order to make an equitable partition, and to report to your court their proceedings under their hands or under the hands of any two of them, within a reasonable time, not exceeding sixty days after the notification of their appointment.

This ... day of, 19...

.....
Attorney for Petitioners.

No. 350.—Order appointing commissioners.

North Carolina, county—In the superior court, before clerk.

(Title as in No. 349.)

The petition in this cause being heard, it is ordered by the court that and and be and they are hereby appointed commissioners to divide the lands described in the said petition into equal shares, and to allot to each of the petitioners one share in severalty, and if equal shares can not be made by dividing the land, then the said commissioners are to charge the more valuable dividends with such sums of money as they shall deem necessary, to be paid to the dividends of inferior value in order to make an equitable partition. Said commissioners shall meet on the premises at the time summoned by the sheriff, and after being sworn by a justice of the peace, or other person authorized to administer oaths, shall divide the said lands. The commissioners are empowered to employ the county surveyor, or in his absence, or if he be connected with the parties, some other surveyor, who shall make out a map of the premises, showing the quantity, courses and distances of each share, which map shall accompany and form a part of the report of the commissioners; and the said commissioners shall, within sixty days of the notification of their appointment, make a full report of their proceedings, under their hands, or the hands of any two of them, specifying therein the manner of executing their trust, and describing particularly the land or parcels of land divided, and the share allotted to each tenant in severalty, with the sums charged on the more valuable dividends and to whom to be paid.

This ... day of, 19..., Clerk Superior Court.

No. 351.—Notice to commissioners.

North Carolina, county—In the superior court, before the clerk.

A.....	B.....	} Notice to commissioners.
vs.		
C.....	D.....	

To Messrs.,, and

You are hereby notified that you have been appointed as commissioners to partition the following-described acres of land, to-wit, that tract of land which was conveyed to A B and C D by L M by deed recorded in book, page, in the office of the register of deeds of county, and bounded as follows: (Here describe land by metes and bounds.)

You will divide the said acres into two equal shares and allot to A B one share thereof in severalty and allot the other share thereof unto C D in severalty; and if equal shares can not be made by dividing the land, then you shall charge the more valuable dividend with such sum of money as you shall deem necessary, to be paid to the dividend of inferior value in order to make an equitable partition.

You will meet on the premises at the time summoned by the sheriff and, after being sworn by a justice of the peace or other person authorized to administer oaths, you will divide the said lands as above indicated.

You are empowered to employ the county surveyor, or in his absence, or if he be connected with the parties, some other surveyor, who shall make a map of the premises showing the quantity, courses and distances of each share, which map shall accompany and form a part of your report.

Within sixty days of the notification of your appointment, you will make a full report of your proceedings under your hands or under the hands of any two of you, specifying therein the manner of executing your trusts and describing particularly the land or parcels of land

divided and the share allotted to each tenant, with the sums charged on the more valuable dividends and to whom the same shall be paid.

This ... day of, 19...
Clerk of the Superior Court of County.

No. 352.—Oath of commissioners to divide land.

North Carolina, county—In the superior court, before the clerk.

A.....	B.....	} Oath of commissioners.
	vs.	
C.....	D.....	

We and each of us solemnly swear that in the partition of the real estate now about to be made by us in the above-entitled proceeding we will do equal and impartial justice among the several claimants, according to their several rights and agreeable to law: So help us, God.

Subscribed and sworn to before me, this ..day of, 19..
....., Justice of the Peace.

No. 353.—Report of commissioners.

(Title as in No. 352.)

To....., clerk of the superior court,county:

Obedient to a summons of the sheriff of county, we, the undersigned commissioners appointed to divide and allot in severalty the lands of the petitioners in this cause, containingacres, assembled on the premises in township,county, on the ..day of, 19.., and proceeded to partition the said lands among the said tenants in common, according to their respective rights and interests therein, and the following is our report of the same: (here state in a separate paragraph what A B receives in acres, and a description of the same, with the number of the plat, and if the number of A B is chargeable with any sum to make equality state it, and to whom payable, or if it lacks any sum, state it, and from whom payable, if from one tenant or more than one. This course is pursued with regard to all the tenants. A map must be appended to the report and show the findings of the commissioners).

Respectfully submitted,

This ..day of, 19...

Commissioners.

No. 354.—Decree confirming report of commissioners.

(Title as in No. 352.)

It appearing to the court that and, commissioners heretofore appointed by the court to divide the lands described in the petition in this cause among the tenants in common therein named, and allot to each his share in severalty, filed their report in this court on the ..day of, 19.., specifying therein the manner of executing their trust and describing particularly the land (or parcels of land) divided, and the share allotted to each tenant in severalty, and no objection being filed by the parties within the twenty days allowed by law from the filing of said report:

It is therefore decreed by the court, that the said report be and the same is hereby in all respects confirmed, and it is further ordered that said report and the plat appended be enrolled in the records of this

court, and that the same, together with this decree, be certified to the register of deeds for county and registered in his office; and said report and this decree shall be binding among and between the said claimants, their heirs and assigns.

It is also adjudged that the costs of this proceeding be paid by the parties as follows: (Here divide and state bill of costs.)

This ..day of, 19.. Clerk Superior Court.

No. 355.—Petition to sell real estate for division.

North Carolina, county.

In the superior court, before the clerk.

In the matter of
A..... B.....
C..... D.....
E..... F.....
Ex parte }

To the superior court of said county:

The above petitioners respectfully show to the court:

1. That they are tenants in common and are seized in fee-simple and are in possession of the following described lands lying and being in the county of, and township, adjoining the lands of and others, and bounded as follows: (Here give boundaries of land.)

2. That the interest of the petitioners in said lands, as individuals, is as follows, viz: (Here state interest.)

3. That (here state name of infants) are minors without any guardian.

4. That the petitioners desire to hold their interest in said lands, or the proceeds thereof, in severalty.

5. That an actual partition of the lands themselves can not be made without injury to the parties interested, owing to the small number of acres to which each would be entitled by a division.

6. That a sale of said lands would be more advantageous to all the parties interested than an actual partition thereof.

Wherefore, the petitioners pray that the court will appoint some competent person to sell said lands, after due advertisement, to the highest bidder for cash, and report his proceedings in regard to said sale within ten days after sale into the office of the court.

....., Attorney for Petitioner.
This ... day of, 19...

No. 356.—Order of sale.

(Title as in No. 355.)

This cause coming on to be heard on the petition, and being heard, and it appearing to the satisfaction of the court that an actual partition of the lands mentioned and described in said petition can not be made without injury to the petitioners, and it also appearing that a sale of said lands would be more advantageous to the petitioners than a division thereof:

It is therefore ordered by the court, that be and he is hereby appointed a commissioner to sell the lands described in said petition (on the ..day of, 19..) at the court-house door of county to the highest bidder at public auction upon the following terms, to-wit: (here state terms of sale), after posting a notice of said sale at the court-house door and at three other public places in county for thirty days immediately preceding such sale, and also publishing said notice for four weeks in, a newspaper published in,

N. C., and the said commissioner shall report his proceedings in the premises to this court within ten days from date of sale.

....., Clerk Superior Court.

This ..day of...., 19..

Note.—Report of sale and decree of confirmation may be easily drawn by reference to similar forms in cases of sale by administrators to make assets, being No. 293 and No. 294, infra.

No. 357.—Notice to minor to have guardian ad litem appointed.

North Carolina, county.

In the superior court, before the clerk.

..... }
vs. } Notice.
..... }

To, minor: Take notice, that unless you procure the appointment of a guardian ad litem to appear and defend the above-entitled action or special proceeding on your behalf on or before the .. day of...., 19.., at ..o'clock, ..m., an application will be made to the honorable clerk of the superior court of county at his office in the court-house in, N. C., on said ..day of....; 19.., at ..o'clock ..m., for an order appointing some suitable and competent person guardian ad litem for you and authorizing and directing him to appear and defend the above-entitled action or special proceeding in your behalf.

This ..day of...., 19..

....., Attorney for Plaintiff.

(The above notice to be served on the minor by delivering a copy to said minor and to his parent or other person with whom he resides.)

No. 358.—Petition and motion for guardian ad litem.

North Carolina,county.

In the superior court, before the clerk.

..... }
vs. } Petition and motion for guardian ad litem.
..... }

The petition and motion of, attorney for plaintiff in the above-entitled action, respectfully shows:

1. That this action was commenced for the purpose of partitioning a certain lot or parcel of land (here describe the said land) which the plaintiff and defendant own as tenants in common, all of which was set forth in the complaint in this proceeding, which was filed on the ..day of...., 19..

2. That the undersigned is informed and believes that the defendant,, is a minor without general or testamentary guardian, as is alleged in the complaint in this proceeding.

3. That on the ..day of, 19.., the summons in this cause, together with a copy of the complaint, was served upon the defendant and also upon (parent or person with whom the minor resides).

4. That on the ..day of...., 19.., the undersigned served written notice upon the defendant and also upon the said (parent, etc.), that unless said minor procured the appointment of a guardian ad litem to appear and defend this action on his behalf on or before the ..day of, 19.., at ..o'clock, ..m., the undersigned would make application to the honorable clerk of the superior court of county for an order appointing some suitable and competent person guardian ad litem for him and authorizing and directing him to appear and defend the above-entitled action or special proceeding in his behalf, all of which appears by a copy of said notice on file in this court with the proof of service endorsed thereon.

5. That the time fixed in the said notice has expired and the defendant has neglected to apply for the appointment of a guardian ad litem in this proceeding.

Wherefore, the undersigned attorney for plaintiff asks and moves that some suitable, fit and competent person be appointed guardian ad litem for the defendant,, and be authorized and directed to appear and defend this action in his behalf.

This ..day of...., 19..

....., Attorney for Plaintiff.

Order.

Upon reading and filing the foregoing petition and motion for the appointment of a guardian ad litem for the defendant, together with a copy of the notice to the defendant therein referred to, and no application having been made on the part of the defendant for the appointment of a guardian ad litem, and after due inquiry as to the fitness of the person to be appointed; it is found as a fact by the court that is a discreet, fit, suitable and competent person to act as guardian ad litem for the defendant, and it is ordered that the said be and he is hereby appointed guardian ad litem of the infant defendant in this proceeding for partition, and he is authorized and directed to appear and defend the same on said infant's behalf as guardian.

This ..day of...., 19..

....., Clerk Superior Court County.

Note.—For other forms that may be used in having guardian ad litem appointed, see Nos. 289 and 290.

No. 359.—Petition for appointment as next friend of infant.

North Carolina,county.

In the superior court, before the clerk.

The undersigned respectfully shows to the court that are infants without general or testamentary guardian; that they own a certain undivided interest in a certain tract of land described as follows (here describe land); that it is desirable that there shall be a partition of said property, and it is necessary that there be an action or special proceeding at law for that purpose; that the persons closely connected with said infants are interested in the results of said action or special proceeding, and the undersigned has for that reason been requested to apply for appointment as next friend of said infants; that the undersigned has no interest whatever (neither present nor prospective) in the result of said action or special proceeding except to see that the rights of said infants are protected in the event of his appointment as their next friend.

Wherefore, the undersigned makes application that he be appointed as next friend of said infants in the said action or special proceeding for the partitioning of said land.

This ..day of....., 19..

Signed in the presence of

.....

Order.

Upon reading the foregoing and annexed application, and after making due inquiry as to the fitness of, applicant, to be appointed as next friend of the infants, in an action or special proceeding for the partition of the land hereinafter described, in which they have an interest, it is found by the court to be a fact that the said applicant,, is a reputable and disinterested citizen and a fit and suitable person to act as next friend of said infants in the said action or special proceeding for the partition of said land and the said

applicant,, is hereby appointed to act as next friend of the said infants,, in an action or special proceeding for the partition of said land (describe it).

This ... day of, 19...

....., Clerk Superior CourtCounty.

I hereby accept the appointment as next friend of the infants, in an action or special proceeding above described and agree to act faithfully and diligently in said capacity.

This ..day of, 19...

Witness:

No. 360.—Copartnership agreement.

These articles of copartnership, made this ..day of...., 19.., between A B of the first part and C D of the second part, both of the county of, and state of.....,

Witness, that it is the intention of said parties to form a copartnership for the purpose of carrying on the business of, for which purpose they have agreed to the following terms, to the faithful performance of which they mutually bind and engage themselves each to the other, his heirs, executors and administrators:

First. The style of said copartnership shall be....., and it shall continue for the term of .. years from the above date, except in the case of the death of either of the said parties within the said term, or earlier mutual agreement to dissolve.

Second. The said A B and C D are proprietors of the stock, a schedule of which is contained in their stock-book, in the proportion of to the said A B, and of..... to the said C D, and in case of any addition being made to the same, the said A B shall advance \$.... and the said C D \$.... of the cost thereof.

Third. All profits which may accrue to said partnership shall be divided, and all loss happening to said firm, whether from bad debts, depreciation of goods, or any other cause, and all expenses of the business, shall be borne by the said parties in the aforesaid proportions of their interest in the said stock.

Fourth. The said C D shall devote and give all his time and attention to the business of the said firm as a bookkeeper and accountant; and the said A B shall devote so much of his time as may be requisite in overseeing and directing the outside business of the firm.

Fifth. All the purchases, sales, transactions and accounts of the said firm shall be kept in regular books, which shall be always open to the inspection of both parties and their legal representatives respectively.

Sixth. An account of stock shall be taken, and account between the parties shall be settled as often as once in, and as much oftener as either partner may desire and, in writing, request.

Seventh. Neither of said parties shall subscribe any bond, sign or endorse any note of hand, accept, sign or endorse any draft or bill of exchange, or assume any other liability, verbal or written, either in his own name or the name of the firm, for the accommodation of any other person or persons whatsoever without the consent in writing of the other party; nor shall either partner lend any of the funds of the co-partnership without such consent of the other partner.

Eighth. No importation or large purchase of stock or property shall be made, nor any transaction out of the usual course of business be undertaken, by either of the parties without previous consultation with and the approbation of the other partner.

Ninth. Neither partner shall withdraw from the business of the firm without the consent of the other, more than \$.... per month; and whenever an account between the parties is stated at the end of each year or sooner, and it shall appear that one of the partners has with-

drawn more than \$.... per month, the excess so withdrawn, if requested by the other partner, shall be paid back with interest; but if, at the expiration of the year, a balance of profits be found due to either partner, he shall be at liberty to withdraw the said balance or leave it in the business, provided the other partner consent thereto; and in that case he shall be allowed interest on said balance.

Tenth. At the expiration of the aforesaid term, or earlier dissolution of the copartnership, if the said partners or their legal representatives can not agree in the division of the stock then on hand, the whole copartnership effects, except the debts due the firm, shall be sold at public auction, at which both parties shall be at liberty to bid and purchase like other individuals, and the proceeds shall be divided, after payment of all debts of the firm, in the proportions aforesaid.

Eleventh. For the purpose of securing the performance of the foregoing agreements, it is agreed that either party, in case of any violation of them, or either of them, by the other, shall have the right to dissolve this copartnership forthwith, on his becoming informed thereof, and also to recover his damages for such violation.

In witness whereof, the said A B and C D have hereunto set their hands and seals the day and year first above written.

Witness: A B. (Seal.)
C D. (Seal.)

No. 361.—Oath of register of deeds.

I,, do solemnly swear (or affirm, as the case may be) that I will support the constitution of the United States; so help me, God.

I,, do solemnly and sincerely swear (or affirm) that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the constitution of said state, not inconsistent with the constitution of the United States, to the best of my knowledge and ability; so help me, God.

I,, do solemnly swear (or affirm) that I will faithfully and truly, according to the best of my skill and ability, execute the duties of the office of register of deeds for the county of in all things according to law; so help me, God.

No. 362.—Bond of register of deeds.

North Carolina,county.

Know all men by these presents: That we and are held and firmly bound unto the state of North Carolina in the sum of \$...., to the payment of which, well and truly to be made, we bind ourselves, our executors and administrators firmly by these presents.

Signed and sealed this ..day of, 19..

The condition of the above obligation is such that whereas....., the above bounden, has been duly elected register of deeds for county for the term of two years from the ..day of...., 19.. Now, therefore, if the said shall safely keep the books and records belonging to his office, and at all times truly and faithfully discharge the duties of his said office during his continuance therein, then this obligation is to be void; otherwise to remain in full force and effect.

..... (Seal.)

..... (Seal.)

..... (Seal.)

Witness:

No. 363.—Appointment of road overseer and allotment.

Office of board of supervisors of public roads.

North Carolina,county.

.....township,, 19..

To.....:

Take notice of the following certified copy of an order made by the board of supervisors of public roads of township at its meeting held on the ..day of, 19..:

Ordered by the board, That be and he is hereby appointed overseer of section number of the public road known as the road, said section extending from to; and that there be allotted to him the following hands, who shall respectively be liable to work on said section of said road between the following points, to-wit:

Names of hands.	Shall work from	Shall work to
.....
.....
.....

A true copy:, Chairman.

Attest:, Clerk of the Board.

No. 364.—Summons to work road.

State of North Carolina,county,township.

Mr.....:

You are hereby summoned to work at the following place, to-wit:, on the road leading from to and known as theroad. You will meet the other hands at on the ..day of, 19.., at ..o'clock, a. m., and bring with you the following implements or tools, to-wit: Should more than one day be required to complete the work, this notice will be deemed a sufficient summons for each consecutive day so required.

This ..day of....., 19..

.....Overseer.

No. 365.—Report of road overseer.

State of North Carolina,county.—Report of overseer.

To the board of supervisors of public roads oftownship:

In obedience to the requirements of Section 2716 and 2717 of the Revisal of 1905, I submit the following report as overseer of the road leading from to, and known as the road:

1. The condition of the road at present is
2. The number of days worked on my section since the last meeting of this board is.....
3. The number of hands that attended and worked each day is.....
4. The number and names of those who failed to attend and work are as follows:.....
5. Of those who failed to attend and work as aforesaid, the following were legally summoned:.....
6. Of those who failed to attend and work as aforesaid, the following paid the one dollar as provided by law, to-wit:.....

*7. All moneys collected by me from persons excused from work on the road for the preceding year amount to \$...., and the said sum has been expended as follows:

This ..day of...., 19..

....., Overseer.

State of North Carolina,county.

....., overseer, being duly sworn, deposes and says that the foregoing report is true and correct.

....., Overseer.

Subscribed and sworn to before me, this ..day of, 19..

....., Justice of the Peace.

*No. 7 is to be reported at the meeting of the supervisors in August.

No. 366.—Report of supervisors to superior court.

North Carolina,county,township.

To the superior court ofcounty:

In obedience to the requirements of section 2713 of the Revisal of 1905 of North Carolina, the undersigned, chairman of the board of supervisors of township, county, respectfully reports that the meetings of the said board, required by the Revisal of 1905 of North Carolina under the chapter on "Roads, bridges, ferries," being chapter 65 thereof, have been held in the said township for the year 19.., and that the following is a report of the condition of the public roads in this township:

1. The road leading from to, under the charge of, overseer, is in condition, the said road having been worked by said overseer within the past months.

2. The road leading from, etc.

Respectfully,

Chairman of Board of Supervisors of Township.

No. 367.—Petition for a public road.

North Carolina,county.

To the honorable board of commissioners of county:

The petition of the undersigned, citizens of county, township, respectfully sheweth to your honorable board that the said petitioners desire to have laid out and established a public road from (here state point from which the road starts and the direction taken, and over whose lands) in said county to (here state destination) in said county; that the said road would be of great usefulness and convenience to your petitioners and the public for the following reasons: (Here state reasons). That, being all of the persons over whose lands said road may pass, have had twenty days' notice of the intention of the undersigned to file this petition.

Your petitioners, therefore, pray the board to order the sheriff to summon a jury of three freeholders to lay out and establish between the points named the said road to the greatest advantage of the inhabitants, and with as little prejudice as may be to the lands and enclosures over which the same passes, and to assess such damage as private persons may sustain, and report their proceedings to the next meeting of the board.

And your petitioners would ask any further orders from the board which may be necessary, to the end that the aforesaid road may be laid out and established.

(Names of Petitioners.)

This ... day of, 19...

No. 368.—Notice of filing petition.

North Carolina,county,township.

To A B, C D, etc., of said township:

Take notice, that the undersigned will, at the next meeting of the board of commissioners of said county, on the .. day of, 19..,

petition said board to lay out and establish a public road from to, which proposed road will pass over your land.

(Signatures of some, or all, of petitioners.)

This ... day of, 19...

No. 369.—Notice of petition by clerk.

North Carolina, county—Before board of commissioners.

Notice is hereby given that a petition has been filed before the board of commissioners of county, by and others, to lay out and establish a public road in said county, township, from to, over the land of and others. The notice required by section 2684 of the Revisal of 1905 of North Carolina is given that the said petition will be heard at the next meeting of the said board on the ... day of, 19... .., Clerk of the Board.

This ... day of, 19...

No. 370.—Order for a jury.

North Carolina, county—Before board of commissioners.

State of North Carolina, to the sheriff of county—greeting:

Upon the hearing of a petition signed by and others, residents of township, which petition was filed before the said board to obtain the laying out of a public road from to over the lands of and, it was adjudged and ordered by said board that said petition be granted and said road laid out and established.

You are therefore commanded to summon a jury of three freeholders to meet at one of the termini of the proposed road, and, after being duly sworn by the sheriff or other person authorized to administer oaths, to lay out a public road between the points aforesaid, over the lands of the aforesaid persons, to the greatest advantage of the inhabitants, and with as little prejudice as may be to the lands and inclosures over which the same passes; and, further, to assess such damages as private persons may sustain by reason of the laying out and establishing of the said road; and this they shall do within days from the notification of their appointment and make prompt report thereof to this board.

It is further ordered and decreed that the costs of this proceeding be paid by , Chairman of the Board.

This ... day of, 19...

Attest:....., Clerk.

No. 371.—Oath of jury to lay off road.

I,, do solemnly swear (or affirm) that I will lay out the road directed to be laid out by the board of commissioners of the county from to to the greatest ease and advantage of the inhabitants, and with as little prejudice to the owners of land over which the same shall be laid out as may be, and will truly and impartially assess the damages which may be awarded by me for injuries done to lands by the laying out of said road, without favor, affection, malice or hatred, to the best of my skill and knowledge: So help me, God.

No. 372.—Report of officer and jury.

North Carolina, county, township.

To the board of commissioners of said county:

I,, sheriff of county, in obedience to an order directed to me from the board of county commissioners, dated ... day of, 19.., summoned a jury of three good and lawful men, to-wit,

and, etc., to view the grounds and lay out and mark a road leading from to, over the land of and others. Whereupon said jury met on the ... day of, 19.., and after being duly sworn according to law, proceeded to lay off and mark out said road as ordered.

The damage assessed in favor of the parties over whose lands the road runs are as follows: To, \$....; to, \$.... (and where lands are not damaged no damages will be assessed.)

Respectfully submitted,

(Signature of sheriff.)

(Signatures of jurors.)

This ... day of, 19...

No. 373.—Report on turning a road.

North Carolina, county, township.

To the honorable board of county commissioners:

I,, one of the justices of the peace of said county, having been applied to by for that purpose, did summon and, two disinterested freeholders not of kin or affinity to the applicant, to appear with me on the premises to view and examine a certain alteration which the said proposes to make in a public road leading from to across his own lands; whereupon we, together with the overseer of said road, notified for that purpose by me, and having attended accordingly, and the said and, being duly sworn according to law, proceeded to view and examine carefully the road which is proposed in place of the other and all matters and facts tending to show whether the change should be allowed, and we found (here state the facts and recommendations, stating whether the new road is in good condition and as convenient in every way as the old road).

Respectfully submitted,

....., Freeholder.

....., Freeholder.

....., Justice of the Peace.

This ... day of, 19...

No. 374.—Bond of owner of toll-bridge or ferry.

North Carolina, county.

Know all men by these presents, that we, and, are held and firmly bound unto the state of North Carolina in the sum of \$1,000, to the payment of which well and truly to be made we bind ourselves, our heirs, executors and administrators.

Signed and sealed, this ... day of, 19...

The condition of this obligation is such, that if the above bounden shall constantly find, provide and keep good and sufficient boats or other proper crafts (or keep his bridge in good repair, as the case may be), and always have his said ferry (or bridge) well attended for the passage of all travelers or other persons, their horses, carriages, and other effects, and will indemnify and save harmless every person who may be endamaged by reason of any default in his undertaking, then the above obligation to be void; otherwise to remain in full force and effect.

..... (Seal.)

..... (Seal.)

This ... day of, 19...

..... (Seal.)

No. 375.—Oath of sheriff.

I,, do solemnly swear (or affirm, as the case may be) that I will support the constitution of the United States; so help me, God.

I,, do solemnly and sincerely swear (or affirm) that I will be

faithful and bear true allegiance to the state of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the constitution of said state, not inconsistent with the constitution of the United State, to the best of my knowledge and ability; so help me, God.

I,, do solemnly swear (or affirm) that I will execute the office of sheriff of county to the best of my knowledge and ability, agreeably to law; and that I will not take, accept or receive, directly or indirectly, any fee, gift, bribe, gratuity or reward whatsoever, for returning any man to serve as a juror or for making any false return on any process to me directed: So help me, God.

No. 376.—Bond of sheriff for public taxes.

North Carolina, county.

Know all men by these presents, that we,, are held and firmly bound unto the state of North Carolina in the sum of dollars, to the payment of which well and truly to be made we bind ourselves jointly and severally, our heirs, executors and administrators, firmly by these presents. Signed and sealed this ... day of, 19...

The condition of the above obligation is such, that if the above bounden, sheriff of county, shall well and truly collect and account for, pay over and settle the state taxes according to law, then the above obligation is to be void; otherwise to remain in full force and virtue.

.....(Seal.)

.....(Seal.)

.....(Seal.)

Witness:.....

Note.—The bond of the sheriff for county and other local taxes can easily be drawn by modifying the foregoing form. See sec. 1587 for the form of his third bond for the due execution and return of process, etc.

No. 377.—Sheriff's certificate of sale of land for taxes.

North Carolina, county.

I,, sheriff of the county of, do hereby certify that the following described real estate in said county and state, to-wit (describing the same and stating in whose name it was listed on the tax lists), was, on the ... day of, 19.., duly sold by me, in the manner provided by law, for the delinquent taxes of for the year 19.., amounting to dollars, including interest and penalty thereon and the cost allowed by law, when and where (name of the purchaser) purchased said real estate at the price of dollars, he being the highest and best bidder for the same. And I further certify that unless redemption is made of said estate in the manner provided by law, the said, his heirs or assigns, will be entitled to a deed in fee therefor on and after the ... day of, A. D. 19.., on surrender of this certificate.

In witness whereof, I have hereunto set my hand, this ... day of, A. D. 19... .., Sheriff.

No. 378.—Sheriff's deed for land sold for taxes.

North Carolina, county.

Whereas, at a sale of real estate for the non-payment of taxes, made in the county of, on the ... day of, 19.., the following-described real estate which was listed in the name of, in township of said county, was sold, to-wit: (Here place description of real estate conveyed); and,

Whereas, the same not having been redeemed from such sale, and it appearing that the holder of the certificate of purchase of said real estate has complied with the laws of North Carolina necessary to entitle (insert the name of grantee) to a deed of said real estate; now, therefore, I, sheriff of said county of, in consideration of the premises and by virtue of the statutes of North Carolina in such cases provided, do hereby grant and convey unto in fee simple the said real estate hereinbefore described, subject, however, to any right of redemption provided by law.

Given under my hand and seal, this ... day of, A. D. 19...
, Sheriff. (Seal.)

No. 379.—Attachment of debt for taxes.

North Carolina, county.

To A B: Take notice, that this is to attach any debt that is now due or may become due to C D, a delinquent in his poll (or property) tax for the year of nineteen hundred and, and you are hereby summoned to appear before E F, an acting justice of the peace for county, and disclose any indebtedness which is or may be due said delinquent by you during the present calendar year, and to show cause why judgment should not be rendered against you for said delinquent tax and costs of this proceeding. ... day of, 19...
, E F, Justice of the Peace.

No. 380.—Information of a stray.

North Carolina, county, township.

A B makes information to, the register of deeds of said county, that he, the said A B, on the ... day of, 19..., at his plantation, did take up a certain stray horse (or cow, sheep, etc., as the case may be) of a color, branded on the with the letter ...; that the brand (or mark) has not been altered to his knowledge since the said stray was taken up; and that the owner is to him unknown.

To, register of deeds., Taker-up.
 This ... day of, 19...

No. 381.—Advertisement of stray.

North Carolina, county, township.

Taken up and entered on the book of strays of county according to law, by, living miles of the court-house of said county in township, a certain stray of the following description (here describe the stray as it appears on the stray book).

This ... day of, 19... .., Register of Deeds.

No. 382.—Summons to freeholders.

North Carolina, county, township.

To, freeholders, and, justice of the peace:

You are hereby required to attend at, on the ... day of, 19..., then and there to view and appraise on oath a certain stray, lately taken up by, of said township, and return your appraisalment forthwith under your hands to the undersigned.

This ... day of, 19... .., Register of Deeds.

No. 383.—Oath of valuers of strays.

You swear (or affirm) that you will well and truly view and appraise the stray, now to be valued by you, without favor or partiality, according to your skill and ability: So help you, God.

No. 384.—Return of valuers of strays.

North Carolina, county, township.

To, register of deeds:

In obedience to a summons to us directed, we, and and , having been duly sworn, proceeded on this ... day of , 19.., to view and appraise a certain stray, taken up by The said stray is of the following description (here describe particularly and accurately); and we appraise its value to be \$.....

(Signatures of freeholders and justice of the peace.)

This ... day of , 19...

No. 385.—Order for sale of stray.

North Carolina, county.

To, sheriff of county:

Whereas, did, on the ... day of , 19.., take up at his plantation a certain stray, of which the following is a full and accurate description (here describe accurately); and whereas, said duly informed me of the same, which information I duly recorded, as appears in my book of strays, page; and whereas, I thereupon published the notice required by law; and whereas, the owner of said stray failed to claim the same within thirty days after the publication of said notice; and whereas, the said stray was appraised to be of the value of \$.... in the manner prescribed by law, as appears of record in the said book of strays, page:

Now, therefore, I hereby direct you to sell said stray at public auction after ten days public advertisement as for sales of personal property under execution, and out of the proceeds of such sale to pay the cost of publishing the notices as to the said stray, the costs of keeping, and the costs of sale, and pay the surplus to the county treasurer for the benefit of the public school fund of the county.

This ... day of , 19... .., Register of Deeds.

No. 386.—Oath of standard-keeper.

I,, do solemnly swear (or affirm) that I will support the constitution of the United States: So help me, God.

I,, do further solemnly and sincerely swear (or affirm) that I will be faithful and bear true allegiance to the state of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the constitution of said state, not inconsistent with the constitution of the United States, to the best of my knowledge and ability: So help me, God.

I,, do swear (or affirm) that I will not stamp, seal or give any certificate for any steelyards, weights or measures, but such as shall, as near as possible, agree with the standard in my keeping, and that I will, in all respects, truly and faithfully discharge and execute the power and trust by law reposed in me, to the best of my ability and capacity: So help me, God.

No. 387.—Bond of standard-keeper.

North Carolina, county.

(Payable to the state in the sum of \$200.)

The condition of the above obligation is such, that whereas, the above bounden has been duly appointed standard-keeper for the county of: Now, therefore, if he, the said, shall safely keep all the standard weights and measures, stamps and brands, belonging to his said office, and shall at all times well and faithfully

perform all and singular the duties of his said office of standard-keeper, then the above obligation to be void, otherwise to remain in full force and effect.

(Signatures of standard-keeper and bondsmen.)

No. 388.—Certificate of standard-keeper.

North Carolina, county.

I,, standard-keeper of said county, do hereby certify that I this day proceeded to examine (describe weight or measure) of, and have tried the same by the standard now in my office, and it is found to agree with the said standard.

This ... day of, 19... .., Standard-keeper.

No. 389.—Petition for dower.

North Carolina, county.

In the superior court—before the clerk.

.....	}	Petition for dower.
Widow, etc.,		
vs.		
.....		
.....		
Heirs-at-law, etc.		

To the clerk of the superior court of county:

The petition of, widow of, deceased, respectfully sheweth that her late husband died intestate in county, during the month of, 19..., leaving him surviving the following children, to-wit,, who are his only heirs-at-law, and of whom the said infant.. under twenty-one years of age, and without any guardian. Your petitioner further sheweth that her said husband during his coverture with the petitioner was seized in fee simple and possessed of the following real estate, to-wit: (Here describe lands.)

Your petitioner desires to have her dower in said lands allotted to her, and to that end she prays your honor to issue a writ to the sheriff, commanding him to summon three (unless one of the parties demand a greater number, and then not more than twelve) freeholders, connected with the parties neither by consanguinity nor affinity, entirely disinterested and qualified to act as jurors, to view the said land, and to allot to her one-third part thereof, including the dwelling-house and all outhouses, buildings and improvements appertaining thereto, for the term of her natural life, and to report their proceedings in due form of law.

Your petitioner further prays the court to issue summons with copies of this petition to the said defendant., heirs-at-law, and to appoint a proper guardian ad litem for the infant defendant., requiring them to appear before you and show cause, if any they can, why the prayer of your petitioner shall not be granted.

This ... day of, 19...

....., Attorney for Petitioner.

No. 390.—Order for a jury.

(Title as in No. 389.)

Upon the hearing of the petition in this cause, it is ordered that a writ be issued to the sheriff, commanding him to summon a jury of not

less than three nor more than twelve freeholders, who shall meet on the premises described in the petition and, after being duly sworn by the sheriff or other person authorized to administer oaths, shall allot and set apart to the petitioner, according to law, her dower in the lands of her late husband,, which are described in her petition, and report to this court their proceedings under their hands within five days.

This . . . day of, 19...

No. 391.—Writ of dower.

(Title as in No. 389.)

State of North Carolina, to the sheriff of county—greeting:

Whereas,, widow of, lately filed her petition in this court against, heirs-at-law of her said husband, and it was ordered that a writ of dower be issued to the sheriff in her behalf as to the following lands, to-wit: (Here describe lands of husband.)

You are therefore commanded to summon three—unless the parties demand a greater number, and then not more than twelve—freeholders, not connected with the parties by consanguinity or affinity, and entirely disinterested, who are to meet on the premises above described and after being duly sworn by you, or some other person authorized to administer oaths, are to allot and set apart to the said, by proper metes and bounds, one-third of the said lands, including therein the dwelling-house, and all offices, out-houses, buildings and improvements thereunto belonging or appertaining, during the term of her natural life, and to put her into possession of the same; and the allotment of dower made by the said jury, after being reduced to writing, and signed by them, you are to return into this court within five days after said allotment.

This . . . day of, 19...

Note.—The parties to the proceeding or their attorneys, if within the county, shall be notified of the time and place of the meeting of the jury to lay off dower at least five days before said meeting.—Ed.

No. 392.—Oath of jury laying off dower.

You and each of you swear (or affirm) that you will, without partiality, and according to your best judgment, lay off and allot to A B, widow of C D, such dower in the lands of said C D as by law she is entitled to: So help you, God.

No. 393.—Report of jury allotting dower.

(Title as in No. 389.)

To the clerk of the superior court of county:

Pursuant to a summons by the sheriff of county, we, the undersigned jurors, assembled on the premises described in the writ of dower hereto annexed, on the . . . day of, 19.., and after being duly sworn by, proceeded to lay off and allot to, and we do allot to said, her dower and third in the lands of, deceased, according to the following metes and bounds (here describe the dower lands), including the dwelling-house, offices, out-houses, buildings and improvements thereon.

This . . . day of, 19...

.....
.....
.....

No. 394.—Application for a year's support.

North Carolina, county, township.

In the matter of..... } Application for a year's support.
widow, etc., ex parte.

To, administrator of, deceased:

The undersigned, widow of the said, being entitled to a year's support for herself and family, respectfully applies to you to have the same allotted to her, as is prescribed by act of assembly.

Dated the ... day of, 19... .., Widow.

No. 395.—Application of administrator for jurors to assign year's support.

North Carolina, county, township.

To, justice of the peace:

In accordance with the above request, the undersigned, administrator of the said, deceased, respectfully asks that you will summon two disinterested persons (qualified to act as jurors) as commissioners, who shall, after being by you duly sworn to act impartially, together with yourself, ascertain the number of the family of, the said deceased, and examine the stock, crop and provisions on hand, and assign to the widow of said, deceased, so much thereof as is allowed by law, and put her in possession of the same. Should there be a deficiency of such crop, stock or provisions for said purpose, you are respectfully requested to order such deficiency, stating the amount thereof, to be made up from the personal estate of said deceased.

This ... day of, 19... ..
Administrator of, deceased.

North Carolina, county, township.

State of North Carolina, to any constable
or other lawful officer of county—greeting:

You are hereby commanded to summon to be and appear at the residence of in said township, on the ... day of, 19... to assist in laying off and assigning to, widow of, deceased, a year's support for herself and family. Herein fail not.

Dated this ... day of, 19... .., Justice of the Peace.

No. 396.—Petition for year's support—report of commissioners.

North Carolina, county, township.

In the matter of..... } Report of commissioners.
widow, etc.

The undersigned,, justice of the peace, and and, commissioners, duly summoned and sworn, do hereby assign and allot to, widow of, deceased, the following articles of personal property, of the values annexed, to-wit: (Here name each article and give its value.)

We also find, upon examination, that the number of the family of the said widow, exclusive of herself, is, There being a deficiency of articles on hand to make up the year's support, we assess such deficiency at \$....., to be paid by the personal representative of said

This ... day of, 19... ..

Note.—The Revisal of 1905, section 3099.—The commissioners shall make and sign three lists of articles assigned to the widow, stating the quantity and value of each, the number in the family, and the deficiency to be paid by the personal representative. One of these

lists shall be delivered to the widow, one to the personal representative, and one returned by the justice, within twenty days after the assignment, to the superior court of the county, and the clerk shall file and record the same, and enter judgment against the personal representative, to be paid when assets shall come into his hands for any residue found in favor of the widow.—Ed.

No. 397.—Judgment for deficiency—widow's year's allowance.

North Carolina, county.

In the superior court—before the clerk.

In the matter of } Judgment for deficiency.
widow, etc.

In this case, the commissioners who were appointed to lay off and allot to, widow of, deceased, her year's allowance out of the crop, stock and provisions of her deceased husband, having filed a descriptive list showing a deficiency to the amount of \$...., it is therefore ordered, adjudged and decreed that the said recover of, as the administrator of the said, deceased, the said sum of \$...., to be paid when personal assets come into his hands, together with the costs of this proceeding.

This ... day of, 19... .., Clerk Superior Court.

No. 398.—Form of will—general.

North Carolina, county.

I,, of the aforesaid county and state, being of sound mind, but considering the uncertainty of my earthly existence, do make and declare this my last will and testament:

First. My executor, hereinafter named, shall give my body a decent burial, suitable to the wishes of my friends and relatives, and pay all funeral expenses, together with all my just debts, out of the first moneys which may come into his hands belonging to my estate.

Second. I give and devise to my beloved wife,, the tract of land on which I now reside, containing one hundred and fifty acres, for her natural life, in satisfaction of her dower and third in all my lands.

Third. I give and devise to my son,, and his heirs, in fee simple, a tract of land in township, county, adjoining the lands of and others, containing acres, being the tract which I purchased of

Fourth. I give and bequeath to my said beloved wife, two beds and furniture, her choice; all the household and kitchen furniture not otherwise disposed of in my will; thirty head of sheep; eighteen head of cattle; thirty head of hogs; all the domestic fowl and poultry; one bay gelding colt ... years old; one sorrel mare, ... years old, named "Fannie"; one roan horse, ... years old, named "John"; the family carriage; all the crops on the plantation whereon I now live, and all the provisions on hand at the time of my death.

Fifth. I give and bequeath to my daughter,, wife of, the sum of \$300, to be paid by my executor within two years from the date of my death, out of the moneys belonging to my estate not otherwise disposed of, (which sum, together with the advancements she had from me at the time of her marriage, and sundry small advancements since that time, will make her a fair and equitable portion according to the value of my personal estate).

Sixth. I give and bequeath to my son,, one gray horse, three years old, a bridle and saddle; one wagon; the balance of the stock of every description not otherwise disposed of in this will. I also give and bequeath to my son, the sum of \$...., to be paid as the foregoing bequest of money is herein directed to be paid.

Seventh. I give and devise to my youngest son,, the tract of land on which I now live, subject to the life estate of my said wife, as devised in a former item of this my will, to have and to hold to him and his heirs in fee simple.

Eighth. My will and desire is that all the residue of my estate (if any) after taking out the devises and legacies above mentioned, shall be sold by my executor or his successor, and the debts owing to me collected, and if there should be any surplus over and above the payment of debts, expenses and legacies, that such surplus shall be equally divided and paid over to my said wife and all my children in equal proportion, share and share alike.

Ninth. And whereas, my said son,, is a minor of the age of about fourteen years, and will not be of the full age of twenty-one until the . . . day of, 19..: Now, therefore, my will and desire is that my brother,, be, and he is hereby constituted and appointed guardian of the said, to have and to hold the custody of his estate until the said shall arrive at the full age of twenty-one years.

Tenth. I hereby constitute and appoint my trusty friend,, my lawful executor to all intents and purposes, to execute this my last will and testament, according to the true intent and meaning of the same, and every part and clause thereof—hereby revoking and declaring utterly void all other wills and testaments by me heretofore made.

In witness whereof, I, the said, do hereunto set my hand and seal, this . . . day of, 19... .. (Seal.)

Signed, sealed, published and declared by the said to be his last will and testament in the presence of us, who, at his request and in his presence, (and in the presence of each other,) do subscribe our names as witnesses thereto.

(Two witnesses' names.)

No. 399.—Form of codicil.

North Carolina, county.

I,, of said county and state, make this codicil to my last will and testament published by me, and dated the . . . day of, 19.., which I ratify and confirm, except as the same shall be changed hereby.

Whereas, by my will above mentioned, I gave and devised to my son,, a certain tract of land, as appears by the third item of said will; and whereas, my said son has since died without issue and unmarried: Now, therefore, I hereby revoke the said devise to my said son, and devise the real estate therein given to him to my daughter,, and my son,, equally in fee simple.

In testimony, etc. (Seal.)

Signed, sealed, published and declared by the said to be a codicil to his last will and testament in our presence; and we, in his presence, (and in the presence of each other,) have, at his request, hereto subscribed our names as witnesses.

(Two witnesses.)

No. 400.—Probate of will upon examination of subscribing witnesses. (Old form.)

North Carolina, county.

In the superior court—before the clerk.

A paper-writing purporting to be the last will and testament of, deceased, is exhibited before me, the undersigned, clerk of the superior court for said county, by, the executor.. therein mentioned, and the due execution thereof by the said is proved

by the oath and examination of, the subscribing witnesses thereto, who, being duly sworn, do depose and say, and each for himself depose and saith, that he is a subscribing witness to the paper-writing now shown him, purporting to be the last will and testament of; that the said, in the presence of this deponent, subscribed his name at the end of said paper-writing now shown as aforesaid, and which bears date of the ... day of, 19...

And the deponent further saith that the said, the testator aforesaid, did, at the time of subscribing his name as aforesaid, declare the said paper-writing so subscribed by him and exhibited to be his last will and testament, and this deponent did thereupon subscribe his name at the end of said will as an attesting witness thereto, and at the request and in the presence of the said testator. And this deponent further saith, that at the said time when the said testator subscribed his name to the said last will as aforesaid, and at the time of the deponent's subscribing his name as attesting witness thereto, as aforesaid, the said was of sound mind and memory, of full age to execute a will, and was not under any restraint, to the knowledge, information or belief of this deponent. And further these deponents say not.

Severally sworn and subscribed this ... day of, 19.., before me., Clerk Superior Court.

North Carolina, county—In the superior court.

It is therefore considered and adjudged by the court that the said paper-writing, and every part thereof, is the last will and testament of, deceased, and the same, with the foregoing examination and this certificate, are ordered to be recorded and filed.

This ... day of, 19.., Clerk Superior Court.

Note.—The clerk shall take in writing the proofs and examinations of the witnesses touching the execution of the will, in addition to embodying the substance thereof in his certificate of probate as above, and such proofs and examinations must be filed in his office. All the papers should be attached to the will.

No. 401.—Probate of will upon examination of subscribing witnesses. (New form.)

North Carolina, county.

In the superior court—before the clerk.

In the matter of the will of, deceased.

The paper-writing hereto attached and purporting to be the last will and testament of, deceased, is exhibited before the undersigned clerk of the superior court of county, North Carolina, by, the executor therein named, and thereupon the following proof thereof is taken by the oath and examination of and, the subscribing witnesses thereto, as follows:

North Carolina, county.

..... and, being duly sworn, depose and say, and each for himself deposes and says, that he is a subscribing witness to the said paper-writing now shown him, purporting to be the last will and testament of, and that he saw execute (or heard acknowledge the execution of) this writing as his last will and testament, and that affiant attested it in the presence and at the request of said, deceased; and that at the time of its execution (or at the time its execution was acknowledged) said was, in affiant's opinion, of sound mind and disposing memory.

Severally subscribed and sworn to before me, this ... day of, 19...

Clerk of the superior court of county.

And hereupon it is considered and adjudged by the court that the said paper-writing and every part thereof is the last will and testament of, deceased, and it is ordered that the same, with the foregoing examination and this certificate, be recorded and filed.

This ... day of, 19...

Clerk of the Superior Court of County.

No. 402.—Probate of will upon examination of one witness and proof of handwriting of the other.

North Carolina, county.

In the superior court—before the clerk.

In the matter of the will of, deceased.

The paper-writing hereto attached and purporting to be the last will and testament of, deceased, is exhibited before the undersigned clerk of the superior court of county, North Carolina, by, the executor therein named, and thereupon the following proof thereof is taken by the oath and examination of, one of the subscribing witnesses thereto, and of, as follows:

North Carolina, county.

....., being duly sworn, deposes and says that he is a subscribing witness to the said paper-writing now shown him, purporting to be the last will and testament of, and that he saw execute (or heard acknowledge the execution of) this writing as his last will and testament, and that affiant attested it in the presence and at the request of said, deceased; and that at the time of its execution (or at the time its execution was acknowledged) said was, in affiant's opinion, of sound mind and disposing memory. Affiant further swears that, the other subscribing witness to said will, signed the same as a witness in the presence of affiant and that affiant saw him sign the same, and that said is now dead (or resides out of the state of North Carolina, or can not after due diligence be found within the state of North Carolina, or is insane or otherwise incompetent to testify).

Subscribed and sworn to before me, this ... day of, 19...

Clerk of the Superior Court of County.

North Carolina, county.

....., being duly sworn, deposes and says that he is well acquainted with the handwriting of, one of the subscribing witnesses to the paper-writing purporting to be the will of, deceased, which is hereto attached, dated the ... day of, 19.., having often seen him write, and that the name of the said subscribed as a witness to said will is in the genuine handwriting of the said; and affiant further swears that he is well acquainted with the handwriting of, deceased, whose will the attached paper-writing, dated the ... day of, 19.., purports to be, having often seen him write, and that the name of the said subscribed to said will is in the genuine handwriting of the said

Subscribed and sworn to before me, this ... day of, 19..

Clerk of the Superior Court of County.

And thereupon it is considered and adjudged by the court that the said paper-writing and every part thereof is the last will and testa-

ment of, deceased, and it is ordered that the same, with the foregoing examination and this certificate be recorded and filed.

This . . . day of, 19...

....., Clerk of the Superior Court of County.

Note.—Any number of affidavits may be taken and set out in the manner illustrated above.

No. 403.—Probate of will where both subscribing witnesses are dead. North Carolina, county—In the superior court.

A paper-writing, purporting to be the last will and testament of J S, deceased, is exhibited for probate in open court by J L, one of the executors therein named; and it is thereupon proved by the oath and examination of A B that C D, one of the subscribing witnesses thereto, is dead, and it is also proved by the oath and examination of E F that G H, the other subscribing witness thereto, is also dead. And it is further proved by the oath and examination of the said A B that he is well acquainted with the handwriting of the said C D, having often seen him write, and that the name of the said C D, subscribed as a witness to the said will, is in the handwriting of the said C D. And it is also proved by the oath and examination of the said E F that he is well acquainted with the handwriting of the said G H, having often seen him write, and that the name of the said G H, subscribed as a witness to the said will, is in the handwriting of the said G H; and it is also proved by the oath and examination of L M that he is well acquainted with the handwriting of J S, the testator therein named, having often seen him write: It is therefore considered and adjudged by the court that the said paper-writing, and every part thereof, is the last will and testament of the said J S, and the same is ordered to be recorded and filed.

This . . . day of, 19... .., Clerk Superior Court.

Note.—The clerk shall take in writing the proofs and examinations of the witnesses touching the execution of the will, in addition to embodying the substance thereof in his certificate of probate as above, and such proofs and examinations must be filed in his office. All the papers should be attached to the will.

No. 404.—Probate of holograph will.

North Carolina, county—In the superior court.

A paper-writing without subscribing witnesses, purporting to be the last will and testament of A B, deceased, is exhibited for probate in open court by E F, one of the executors therein named; and it is thereupon proved by the oath and examination of E F that the said will was found among the valuable papers and effects of the said A B, after his death. And it is further proved by the oath and examination of three competent and credible witnesses, to-wit, G H, J K, L M, that they are acquainted with the handwriting of the said A B, having often seen him write, and verily believe that the name of the said A B, subscribed to the said will, and the said will itself, and every part thereof, is in the handwriting of the said A B. And it is further proved by the evidence of the three last-mentioned witnesses, that the said handwriting is generally known to the acquaintances of the said A B. It is therefore considered and adjudged by the court that the said paper-writing and every part thereof is the last will and testament of the said A B, and the same is ordered to be recorded and filed.

....., Clerk of the Superior Court.

Note 1.—If the will was lodged in the hands of any person for safe keeping, omit the words "found among the valuable papers," etc., and insert, "lodged in the hands of J L for safe keeping."—Ed.

Note 2.—The clerk shall take in writing the proofs and examinations of the witnesses touching the execution of the will, in addition to embodying the substance thereof in his certificate of probate as above, and such proofs and examinations must be filed in his office. All the papers should be attached to the will.

No. 405.—Probate of nuncupative will.

North Carolina, county—In the superior court.

A paper-writing, purporting to contain the nuncupative will of A B, deceased, and which is in words and figures following, to-wit: (here copy the writing containing the nuncupative will) is exhibited for probate in open court by C D, the executor therein named. And it is thereupon proved by the evidence of E F and G H, two competent and credible witnesses, that the said A B, in his last illness, in his own dwelling-house, and when he was of sound mind and disposing memory, and in their presence, did make a nuncupative will, and did in said will bequeath his personal estate to the persons and in the manner mentioned in said writing, and that the said witnesses were specially required by the said A B to bear witness thereto. And it is also proved by the said witnesses that the said A B died on the first day of January, A. D. 19.., and that the said nuncupative will was reduced into writing as aforesaid on the ... day of, 19... And it further appears from the return of the sheriff that process has been duly executed upon L M and O P, the next of kin of the said A B, according to law, calling on them to appear and contest said will if they should think proper. It is therefore adjudged that the said paper-writing doth contain the nuncupative will and testament of the said A B as to his personal estate, and the same is to be recorded and filed.

This ... day of, 19..., Clerk Superior Court.

Note.—The clerk shall take in writing the proofs and examinations of the witnesses touching the execution of the will, in addition to embodying the substance thereof in his certificate of probate as above, and such proofs and examinations must be filed in his office. All the papers should be attached to the will.

No. 406.—Order for next of kin to appear. -

North Carolina, county—In the superior court.

A paper-writing (here copy preceding form down to the words "therein named," inclusive). It is therefore ordered that a citation be issued to L M and O P, the next of kin of the said A B, and the widow of said A B, calling on them to appear before the undersigned clerk at his office in, on the ... day of, 19.., and contest said will if they shall think proper to do so.

This ... day of, 19..., Clerk Superior Court.

No. 407.—Probate of will from another state.

North Carolina, county—In the superior court.

It appearing to the satisfaction of the court from the exemplification of the record hereinafter mentioned, that the last will and testament of A B, deceased, a citizen of county and state of, has been duly proved and allowed in the proper court of probate of said county and state, according to the laws of said state, and it further appearing that the said A B left property in the county of and the state of North Carolina, it is therefore ordered and adjudged that the exemplification of said will and of its probate in the proper court of and state of, which has been produced and exhibited here duly certified and authenticated, be allowed, filed and recorded in this court.

This ... day of, 19..., Clerk Superior Court.

No. 408.—Caveat to a will.

North Carolina, county.

In the superior court—before the clerk.

In the matter of the will of
Caveat.

....., caveators, respectfully show to the court the following facts:

1. That on the ... day of, 19.., died in county, North Carolina.

2. That thereafter, to-wit, on the ... day of, 19.., presented to the court a paper-writing purporting to be the last will and testament of the said, and being in words and figures as set out in the paper-writing hereto attached, marked Exhibit "A" and made a part hereof; and, as the caveators are informed and believe, the said alleged and alleges that the same was and is the last will and testament of the said, and procured the same to be admitted to probate in common form as the last will and testament of the said

3. That on the said ... day of, 19.., the said obtained from this court letters of administration upon the estate of the said

4. That the caveators are the brothers of the said (or as case may be).

5. That (here set out the names, addresses and relationship of all of the devisees, legatees and heirs-at-law and other persons, if any, interested, specifying any that may be minors and any that may be non-residents of the state, etc.).

6. That the paper-writing of which said exhibit "A" is a copy was not and is not the last will and testament of the said, deceased, for the reason that the signature of the said thereto was obtained by by undue and improper influence and duress upon the said, as the caveators are informed and believe.

7. That the said paper-writing of which the said exhibit "A" is a copy was not and is not the last will and testament of the said, deceased, for the reason that at the time of the execution thereof and continuously thereafter until her death the said did not have the capacity to make and execute a will for that she was not of sound and disposing memory at and during said time.

Wherefore, the caveators pray that the clerk of this court shall transfer this cause to the superior court for trial, at term, of the issue of devisavit vel non, and for a decree setting aside and annulling the probate of said paper-writing, and that a citation issue to all of the devisees, legatees and other parties in interest within the state, and that publication be made for six weeks in some newspaper printed in the state for any non-resident persons interested in this proceeding to appear at the term of court to which the proceeding is transferred and make themselves proper parties to the said proceeding, if they choose; and the caveators warn and request the court to suspend all further proceedings under said paper-writing until a decision of the issue is had.
....., Attorney for Caveators.

....., being duly sworn, deposes and says that the foregoing petition is true to his own knowledge, except as to matters stated upon information and belief, and that as to those matters he believes it to be true.
.....

Subscribed and sworn to before me, this ... day of, 19..

....., Clerk of the Superior Court.

Note.—A copy of the will is to be attached to the foregoing, marked Exhibit "A."

No. 409.—Undertaking of caveators.

(Title as in next preceding number.)

We,, as principals, and, as sureties, acknowledge ourselves indebted unto propounder in the sum of two hundred dollars.

Signed and sealed, this ... day of, 19...

The condition of the above obligation is such, that whereas, the above-named principals have entered a caveat to the probate of the will of in the office of the clerk of the superior court of county, North Carolina: Now, if the above-named principals shall well and truly pay to the propounder of the said will all costs that

may be adjudged against said caveators in the superior court by reason of their failure to prosecute their suit with effect, then and in that event this obligation to be null and void; otherwise to remain in full force and effect.

.....(Seal.)
(Seal.)
(Seal.)

No. 410.—Citation to interested parties in re caveat.

North Carolina, county.

In the superior court—before the clerk.

In the matter of the will of—Citation.

To of,, of, and, of

You and each of you, as persons interested in the estate of the late, are hereby notified that having entered a caveat to the probate of the paper-writing purporting to be the will of, and having filed the bond required by law, and the case having been transferred to the superior court for trial at term, you will appear at the term, 19.., of superior court, which said term convenes on the ... day of, 19.., and make yourselves proper parties to the said proceeding, if you choose.

This ... day of, 19...

.....
 Clerk of the Superior Court of County.

No. 411.—Form of submission to arbitration.

North Carolina, county.

Whereas, a controversy is now existing between, of, and, of, concerning an alleged indebtedness of the latter to the former:

Now, therefore, we, the said and, do hereby submit the said controversy to the decision and arbitration of A B, C D and E F, and we do covenant, each with the other, that we will in all things faithfully keep, observe and perform the decision and award that they, or any two of them, may make in writing in the premises, under their hands and ready for delivery on or before the first day of, next.

And it is further agreed by the parties hereto, that if either party fail to keep, observe and perform such decision and award as may be made in pursuance of the foregoing submission, he shall pay to the other the sum of \$...., hereby fixed and agreed upon, not as a penalty, but as liquidated and agreed damages.

Mutually executed by the parties to this submission, this ... day of, 19...

No. 412.—Bond for reference and arbitration.

North Carolina, county.

Know all men by these presents, that I, M N, of, in the county of, am bound to O P, of the city of, in the sum of \$...., to be paid to the said O P or his heirs, executors and administrators, firmly by these presents.

Signed and sealed, this ... day of, 19...

The condition of this obligation is such, that if the above M N shall in all things abide by and perform the award of A B, C D and E F, of, etc., arbitrators named as well on behalf of the above M N as of the above named O P to arbitrate, award and determine of and concerning all matters in issue, or depending between said parties (the said award to be made in writing under the hands of the said arbitrators, or any two of them, and ready to be delivered to the said parties

in difference, or such of them as shall desire the same, on or before the ... day of, 19..), then this obligation is to be void, otherwise to remain in full force. (Seal.)

This ... day of, 19...

Note.—Each party should give bond to the other, with security if thought proper.

No. 413.—Arbitrators' oath.

You severally swear faithfully to hear and examine the matters in controversy between M N and O P, and to make a just award therein according to the best of your understanding: So help you, God.

Note.—To be administered by anyone authorized by law to administer oaths.—Ed.

No. 414.—Notice of hearing before arbitrators.

North Carolina, county.

In the matter of arbitration } Before, arbitrators.
between M N and O P.

Take notice, that the above-entitled controversy will be heard at the office of, in the city of, on the ... day of, 19.., at ... o'clock a. m., before and, arbitrators appointed in said controversy.

To, Esq.

This ... day of, 19...

No. 415.—Subpoena to appear before arbitrators.

North Carolina, county.

In the matter of arbitration } Before, arbitrators.
between M N and O P.

State of North Carolina, to the sheriff or other

lawful officer of county—greeting:

You are hereby commanded to summon to personally appear at the office of, in the city of, N. C., on the ... day of, 19.., at ... o'clock ... m., before the said arbitrators chosen to determine a controversy between the said M N and the said O P, then and there to testify in relation thereto before said arbitrators, on the part of, Herein fail not.

This ... day of, 19...

No. 416.—Oath of witness before arbitrators.

You swear (or affirm) that the evidence you shall give the arbitrators here present in the controversy between M N and O P shall be the truth, the whole truth, and nothing but the truth: So help you, God.

No. 417.—Award.

North Carolina, county.

We, A B, C D and E F, to whose arbitrament and award were submitted the matters in controversy existing between and, of, as appears more fully by their written submission, bearing date the ... day of, 19.., (which is hereto annexed) having been first duly sworn, and having heard the proofs, allegations and arguments of said parties, and having duly examined the matters in controversy by them submitted, do make, publish and declare this our award in writing, as follows:

We find that said is indebted to the said in the sum of \$...., and we direct and award that said, within days

after service upon him of notice of this award, pay to said the said sum of \$...., and this is in full of all matters submitted to us.

Witness our hands, this ... day of, 19...

A..... B.....
C..... D.....
E..... F.....

No. 418.—Indemnifying bond.

North Carolina, county.

Know all men by these presents, that we, and and, are held and firmly bound unto in the sum of \$...., for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Signed and sealed, this ... day of, 19...

The condition of the above obligation is such, that whereas the above bounden has obtained judgment for the sum of \$.... against, and an execution has been issued thereon, and the said has levied the same on the following property: (here describe property), which appears to be the property of said, but it is claimed by: Now, therefore, the condition of the above obligation is such, that if the above bounden, and, his sureties, shall well and truly save, keep and bear harmless and indemnify the said and all persons aiding and assisting him in the premises from all harm, trouble, cost, suits, or actions that shall or may be brought against him or them—as well for buying as making sale by virtue of said execution of any such property—then this obligation to be void, else to remain in full force and virtue.

..... (Seal.)
..... (Seal.)
..... (Seal.)

Signed, sealed and delivered in the presence of

No. 419.—Naturalization—declaration of an alien.

North Carolina, county—In the superior court.

In the matter of, alien, {
seeking naturalization. } Before G H, clerk superior court.

On this ... day of, 19.., at the office of the clerk of the superior court of county, and before the said clerk, appears, a native of, a white man, and now a resident of the county aforesaid, and the said, being duly sworn, says that it is bona fide his intention to become a citizen of the United States; that he renounces forever all allegiance and fidelity to every foreign prince, potentate, state or sovereignty whatever, and particularly, of whom he is now a subject; and the affiant therefore asks that his affidavit be filed by the clerk of said court in the records of said court, and a certified copy thereof be given to him., Affiant.

Sworn to and subscribed before me, this ... day of, 19.., and a certified copy thereof given to the affiant.

....., Clerk Superior Court.

No. 420.—Naturalization—record of.

(Title as in No. 419.)

On the ... day of, 19.., before the undersigned, clerk of the superior court of county, at his office in, appeared, a white man, a native of, and now a resident of said county, and applied to said court to be admitted to become a citizen of the United

States, according to act of Congress, and the said exhibits to the court a certificate, duly authenticated, which is in words and figures as follows, to-wit: (Here set forth the above certified affidavit.) And it appearing to the satisfaction of the court, from the oath an examination of and, that the said has resided within the United States five years next preceding his application, and for one year next preceding the same he has resided in the state of North Carolina; and it further appearing from the evidence of the same witnesses that the said A B, during the five years aforesaid, has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same; and the said, being duly sworn, declares, on oath, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state or sovereignty whatever, and particularly (here name former sovereign), of whom he has heretofore been a subject:

Therefore, it is adjudged by the court that be and he is hereby admitted to become a citizen of the United States of America; and it is further adjudged that these proceedings be recorded in the records of the court., Clerk Superior Court.

This ... day of, 19...

No. 421.—Naturalization of an alien, a minor at the time of his arrival in United States.

(Title as in No. 419.)

On the ... day of, 19..., before the undersigned, clerk of the superior court of county, at his office in, appeared, a native of, a white man, and now a resident of said county, and declares on oath that it is, and for the last three years has been, bona fide his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to every foreign prince, potentate, state or sovereignty whatever, and particularly (here name former sovereign); and thereupon he applies to the court to be admitted a citizen of the United States. And it appearing to the satisfaction of the court from the oath and examination of that the said, at the time of his arrival in the United States was a minor under the age of twenty-one years, and from the oath and examination of the said and of that the said resided in the United States three years next preceding his arrival at the age of twenty-one years; that he has continued to reside therein up to the time of making this application; that he has resided five years within the United States, including the said three years of his minority, and one year next preceding the same in the state of North Carolina. And it further appearing from the evidence of the same witnesses that for the last three years it has been bona fide his intention to become a citizen of the United States, and that during the last five years he has behaved as a person of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same. The said thereupon declares on oath that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state or sovereignty whatever, and particularly, of whom he has been heretofore a subject.

It is therefore adjudged by the court that the said be and he is hereby admitted to become a citizen of the United States of America, and it is further adjudged that these proceedings be recorded in the records of the court., Clerk Superior Court.

This ... day of, 19...

No. 422.—General form of a release.

North Carolina, county.

I, A B, of, in consideration of dollars, paid by C D of said, hereby release and discharge the said C D from all claims and demands of every nature which I have against him in law or in equity, arising out of any and all contracts, liabilities, acts and omissions in the past or which may result from the present condition of things.

Witness my hand and seal, this ... day of, 19...

..... (Seal.)

No. 423.—Release of claim for personal injury.

State of, county of

Know all men by these presents, that for and in consideration of the sum of (\$....) dollars, to me paid by the company, the receipt whereof is hereby acknowledged, and of divers other good and valuable considerations me thereunto moving, I,, of the county of and state of, have remised, released and forever discharged, and by these presents do for myself, my heirs, executors and administrators, remise, release and forever discharge the said the company of and from any, every and all, and all manner of, action and actions, cause and causes of action, suits, debts, dues, sums of money, damages, judgments, claims and demands whatsoever which against said the company I ever had or now have, or which my heirs, executors or administrators or any other person whatsoever hereafter can, shall or may have for, by reason of, or growing out of, any act, omission, negligence or unskilfulness on the part of the said the company, or any of its agents, servants or employees, or otherwise, whereby, on the ... day of, 19.., (here describe occurrence and extent of injury) at

And this agreement shall further operate and be in full discharge, satisfaction, compromise, settlement and bar of any claim, demand, suit or proceeding which may have been instituted by me and be pending before any court or tribunal against said company, or any judgment, order or decree which may heretofore have been entered or obtained in my favor against said company, for any sum arising or growing out of the claim or demand set forth above. And it is hereby expressly understood and agreed that the company is under no obligation or requirement to take or retain me in its employment or service in any position or capacity whatever.

In witness whereof, I,, have hereunto set my hand and seal, the ... day of, 19... .. (Seal.)

Signed, sealed and delivered in the presence of

(Notarial seal here.)

.....
Notary Public for County,
State of

PART VII.

OFFICIAL FEE BILL.

[Note.—This fee bill does not purport to show the fees of the officers in the legislative and executive departments of the state government, nor of the justices or other officers of the supreme court, nor of the judges of the superior courts. Moreover, local acts are not all referred to, as these would be of little use to the users of the book generally.]

CLERK OF SUPERIOR COURT.

The fees of the clerk of the superior court shall be the following, and no other, namely:

Advertising and selling under mortgage in lieu of bond, \$2.00 for sales of real estate and \$1.00 for sales of personal property. See s. 266 of the Revisal.

Affidavit, including jurat and certificate, \$0.25.

Appeal from justice of the peace, \$0.50.

Appeal from clerk to the judge, \$0.50.

Appeal to the supreme court, including certificate and seal, \$2.00.

Appointing and qualifying justices of the peace, to be paid by the justice, \$0.25.

Apprenticing infant, including indenture, \$1.00.

Attachment, order in, \$0.50.

Auditing account of receiver, executor, administrator, guardian or other trustee, required to render accounts, if not over three hundred dollars, \$0.50; if over three hundred dollars and not exceeding one thousand dollars, \$0.80; if over one thousand dollars, \$1.00.

Auditing final settlement of receiver, executor, administrator, guardian or other trustee, required to render accounts, one-half of one per cent of the amount on which commissions are allowed to such trustee, for all sums not exceeding one thousand dollars; and for all sums over one thousand dollars, one-tenth of one per cent on such excess; but such fees shall not exceed \$15.00, unless there be a contest, when the clerk shall have one per cent on the said excess over one thousand dollars; but in no instance shall his fees exceed \$25.00.

Auditing and recording the final account of commissioners appointed to sell real estate, one-half of the fees allowed for auditing and recording final accounts of executors.

Bill of costs, preparing same, \$0.25.

Bond or undertaking, including justification, \$0.60.

Cancelling notice of lis pendens, \$0.25.

Capias, each defendant, \$1.00.

Capias, when the defendant is not arrested thereunder, shall be such sum as the commissioners of his county may allow.

Caveat to a will, entering and docketing same for trial, \$1.00.

Certificate, except where it is a charge against the county, \$0.25; and where it is a charge against the county, the fee shall be such sum, not exceeding \$0.25, as the board of commissioners shall allow.

Commission, issuing, \$0.75.

Continuance, \$0.30.

Docketing ex parte proceedings, \$0.50.

- Docketing indictment, \$0.25.
- Docketing liens, \$0.25.
- Docketing judgment, \$0.25.
- Docketing summons, \$0.25.
- Execution and return thereon, including docketing, \$0.50; and certifying return to clerk of any county where judgment is docketed, \$0.25.
- Filing all papers, \$0.10 for each case.
- Guardian, appointment of, including taking bond and justification, \$1.00.
- Impaneling jury, \$0.10.
- Indexing judgment on cross-index book, \$0.10 for the judgment regardless of number of parties.
- Indexing liens on lien book, \$0.10.
- Indictment, each defendant in the bill, \$0.60.
- Injunction, order for, including taking bond or undertaking and justification, \$1.00.
- Judgment, final, in term-time, civil action, \$1.00.
- Judgment, final, against each defendant, in criminal action, \$1.00.
- Judgment final, before the clerk, \$0.50.
- Judgment by confession, without notice, all services, \$3.00.
- Judgment in favor of widow for year's support, \$0.50.
- Judgment nisi, entering against a defaulting witness or juror, on bail bond or recognizance, \$0.25.
- Juror ticket, including jurat, \$0.10.
- Justification of sureties on any bond or undertaking, except as otherwise provided, \$0.50.
- Letters of administration, including bond and justification of sureties, \$1.00.
- Motions, entry and record of \$0.25.
- Notices, \$0.25; and for each name over one, in same paper, \$0.10 additional.
- Notifying solicitors of removal of guardian, \$1.00.
- Order enlarging time for pleading, and all interlocutory orders, in special proceedings and civil actions, \$0.25.
- Order of arrest, \$1.00.
- Order for appearance of apprentice, on complaint of master, \$1.00; for appearance of master on complaint of apprentice, \$1.00.
- Order for the registration of a deed or other writing, which has been proved or acknowledged in another county, or before a judge, justice, notary or other officer, except a chattel mortgage, \$0.25.
- Postage, actual amount necessarily expended.
- Presentment, each person presented, \$0.10.
- Probate of a deed or other writing, proved by a witness, including the certificate, \$0.25.
- Probate of a deed or other writing, acknowledged by the signers or makers, including all except married women who acknowledge at the same time, with the certificate thereof, \$0.25.
- Probate of a deed or other writing, executed by a married woman, for her acknowledgment and private examination, with the certificate thereof, \$0.25.
- Probate of a chattel mortgage, including the certificate, \$0.10.
- Probate of a short form lien bond, or lien bond and chattel mortgage combined, \$0.10, in the following counties: Alamance, Alleghany, Anson, Ashe, Beaufort, Bladen, Brunswick, Buncombe, Burke, Carteret, Caswell, Catawba, Chatham, Chowan, Cleveland, Columbus, Craven, Cumberland, Davie, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gaston, Gates, Granville, Greene, Harnett, Iredell, Johnston, Jones, Lenoir, Lincoln, Martin, McDowell, Mecklenburg, Moore, Nash, New Hanover, Onslow, Pender, Perquimans, Person, Pitt, Polk, Richmond, Robeson, Rockingham, Rowan, Rutherford, Sampson, Union, Vance, Washington, Watauga, Wayne, Wilson.

Probate of limited partnership, \$0.50.

Probate of will in common form and letters testamentary, \$1.00.

Qualifying justice of the peace, to be paid by the justice, \$0.25.

Qualifying members of the board of commissioners, to be paid by the commissioners, \$0.25.

Recognizance, each party where no bond is taken, \$0.25.

Recording and copying papers, per copy sheet, \$0.10.

Recording names, qualification, and expiration of term of office of justices of the peace \$0.05 for each name.

Registering trained nurses, including certificate of registration, \$0.50.

Recording certificates of incorporation of corporations, \$3.00.

Recording names of jurors as required by law, \$0.05 for each name.

Resignation of guardian, relinquishment of right to administer, or qualify as executor, receiving, filing and noting same, \$0.25.

Seal of office, when necessary, \$0.25.

Subpoena, each name, \$0.15.

Summons, in civil actions or special proceedings, including all the names therein, \$1.00, and for every copy thereof, \$0.25.

Transcript of judgment, \$0.25.

Transcript of any matter of record or papers on file, per copy-sheet, \$0.10.

Trial of any cause, or stating an account, as referee, pursuant to order of the judge, such allowance as the judge may make.

Witness ticket, including jurat, \$0.10.

Five per cent commissions shall be allowed the clerk on all fines, penalties, amercements and taxes paid the clerk by virtue of his office; and three per cent on all sums of money not exceeding five hundred dollars placed in his hands by virtue of his office, except on judgments, decrees and executions; and upon the excess over five hundred dollars of such sums, one per cent.

In Robeson County the board of commissioners may make an allowance to the clerk of the superior court for keeping the records of the court and transcribing the minutes, to be paid out of the general county fund.—Rev., 2773.

Note.—Judge fixes in certain settlements, see s. 151 of the Revisal.

For compensation for keeping money paid into court, see Administration, s. 152 of the Revisal.

For fees in organization of corporations, see s. 1235 of the Revisal.

For salary in Guilford County, see, 1905, c. 275.

For fees in Franklin County, see 1905, c. 345.

For salary in Forsyth County, see 1905, c. 436.

For fees in Mecklenburg County, see 1905, c. 829, s. 3.

For additional compensation in Beaufort County, see 1905, c. 835.

COMMISSIONERS.

Assessing damages for right-of-way.—The commissioners appointed, under any order of court, to condemn any land for any railroad or other company or corporation in proceedings to condemn land under and by virtue of any right of eminent domain, shall each receive \$3.00 per day of each day they are engaged in the performance of their duties.—Rev., 2790.

In partition.—The commissioners appointed by any court to make partition of any land, timber or real estate of any kind, or any personal property, shall each receive the sum of \$1.00 per diem for his services.—Rev., 2791.

In sale for partition.—In sales of real estate or personalty for partition the allowance to the commissioner for making such sale, and for all services therewith, and for making title, shall be as follows: For sales of five hundred dollars or less, not more than \$10.00; for sales of over five hundred dollars, two per centum, up to a compensation of \$40.00, and when the allowance shall amount to forty dollars, any addi-

tional compensation shall not exceed the rate of one per cent on the excess over two thousand dollars.—Rev., 2792.

In partition, land in another state.—The commissioners appointed to divide lands lying in this and another state shall be entitled to \$3.00 per day for their services; which, with all fees, expenses and costs, shall be paid as the court may direct.—Rev., 2793.

Assessing damages for mills.—Every commissioner appointed in any proceeding to assess the damages arising from the location of any mill, as provided for in chapter on Mills, shall be entitled to receive \$2.00 per day.—Rev., 2794.

Assessing damages for drainage.—Each commissioner appointed in proceedings under the chapter on Drainage shall be entitled to receive \$1.50 per day.—Rev., 1795.

Of affidavits.—Commissioners of affidavits, and those who are authorized by law to act as such, shall receive the following fees, and no other, namely: For an affidavit taken and certified, \$0.40; affixing his official seal, \$0.25.—Rev., 2796.

Receiver selling as.—Receivers of property appointed by any order of court, in any proceedings or action, shall be allowed such commissions as may be fixed by the court appointing them, not exceeding five per cent on the amount received and disbursed by them.—Rev., 2797.

CONSTABLES.

Constables shall be allowed the same fees as sheriffs.—Rev., 2787.

CORONERS.

Fees of coroners shall be the same as are or may be allowed sheriffs in similar cases.

For holding an inquest over a dead body, \$5.00; if necessarily engaged more than one day, for each additional day, \$5.00.

For burying a pauper over whom an inquest has been held, all necessary and actual expenses, to be approved by the board of county commissioners, and paid by the county.

It shall be the duty of every coroner, where he or any juryman shall deem it necessary to the better investigation of the cause or manner of death, to summon a physician or surgeon, who shall be paid for his attendance and services \$10.00, and such further sum as the commissioners of the county may deem reasonable. But in the county of Buncombe, when the coroner is a physician and surgeon, he shall, at the request of one or more of the jurymen, make the investigation as to the cause and manner of death, and shall receive such fee or compensation as the board of commissioners of Buncombe County shall deem just and reasonable, in addition to the fee for holding the inquest over said dead body.—Rev., 2775.

COUNTY BOARD OF EDUCATION.

The members of the county board of education shall receive \$2.00 per diem and \$0.05 a mile to and from their respective places of meeting.—Rev., 2786.

COUNTY BOARD OF PENSIONS.

Each member of the county board of pensions shall be entitled to \$2.00 a day, not exceeding three days in any year, when attending the annual meeting of said board, the said compensation to be paid by the county treasurer on the order of the board of county commissioners.—Rev., 2783.

COUNTY COMMISSIONERS.

Except where otherwise provided by law, each county commissioner shall receive for his services and expenses in attending the meetings

of the board not exceeding \$2.00 per day, as a majority of the board may fix upon, and they may be allowed mileage to and from their respective places of meeting, not to exceed \$.05 per mile. In Currituck and Wake, a sum not to exceed \$3.00 per day and like mileage. In Craven such sum for extra services as a majority may determine. The commissioners acting separately for the chairman may, on the first Monday in December of each term, fix the compensation of the chairman in such sum as they think proper, in the following counties, and subject to the following limitations: In Bertie, Craven, Durham, Halifax, Iredell, Mecklenburg, New Hanover, Wake and Warren, in their discretion; in Edgecombe, not to exceed \$300.00 per annum; in Buncombe, not to exceed \$3.00 per day; in Vance, not to exceed \$25.00 per month; in Wilson, not to exceed \$1,000.00 per annum. In Wake the board may sit for four consecutive days each month, beginning on the first Monday of each month. The board of commissioners of Wayne County are hereby authorized to pay the chairman of said board for his services as chairman a sum the same as that paid a member of the board of county commissioners while engaged in other county work, the same to be approved by the board of county commissioners. In Nash County the chairman of said board shall be paid at the rate of \$200.00 each year, and each of the other commissioners shall be paid the sum of \$100.00 per year and mileage heretofore fixed by law. The chairman of the board of county commissioners of Mecklenburg County shall receive for his services a salary in lieu of all other compensation now provided by law, the sum to be fixed by the board and not to exceed \$900.00. The commissioners of Robeson County shall receive as compensation for their services in performing the duties of their office the sum of \$3.00 per day and \$0.10 per mile, both ways, for traveling expenses. In Washington County commissioners shall receive no compensation for attendance on call meetings of the board. The chairman of the board of county commissioners of Northampton County shall be paid for his services the sum of \$100.00 annually and mileage of \$0.05 per mile each way for each day of his attendance on said board; each member of said board shall be paid the sum of \$4.00 for each day of his service on said board and like mileage.—Rev., 2785.

COUNTY FINANCE COMMITTEE.

The members of the finance committee shall each receive such compensation for the performance of his duties as the board of commissioners may allow, not exceeding \$3.00 per day; but they shall not be paid for more than ten days in any one year.—Rev., 2781.

COUNTY SUPERINTENDENT OF PUBLIC INSTRUCTION.

The salary of the county superintendent of schools shall be fixed by the county board of education. It shall not be less than \$3.00 per day while engaged in the service of the public schools. The county board of education may fix an annual salary not to exceed four per cent of the disbursements for schools under his supervision. The county board of education of any county whose total school fund exceeds fifteen thousand dollars may employ a county superintendent for all of his time at such salary as may be fixed by said board: Provided, the county superintendent of Iredell County shall not receive over \$600.00 per annum.—Rev., 2782.

COUNTY TREASURER.

The county treasurer shall receive as compensation in full for all services required of him such a sum, not exceeding one-half of one per cent on moneys received and not exceeding two and a half per cent on moneys disbursed by him as the board of commissioners of the county may allow. As treasurer of the county school fund he shall receive such sum as the board of education may allow him, not exceed-

ing two per cent on disbursements: Provided, that in counties where his compensation can not exceed the sum of \$250.00, the said treasurer may be allowed a sum not exceeding two and a half per cent on his receipts and his disbursements: Provided further, the county treasurer of Buncombe County shall receive as compensation in full for all services required of him \$1,750.00 per annum, paid pro rata from the county fund and the school fund; the county treasurer of Gaston County shall receive as a compensation in full for all services required of him a yearly salary not exceeding \$1,200.00, to be fixed by the commissioners of said county; the county treasurer of Mecklenburg County shall receive as a compensation in full for all services required of him a yearly salary not exceeding \$2,750.00, to be fixed by the commissioners of said county. Said salaries to be in lieu of all commissions allowed by law. The treasurer of Martin County shall receive as his commission two and one-half per cent on all money received by him as general county fund and two and one-half per cent on all money disbursed by him as general county fund. Commissions on school fund shall remain as already provided for by law.—Rev., 2778.

Note.—For salary in Guilford County, see 1905, c. 275.

For fees in Forsyth, see 1905, c. 436.

ELECTION OFFICERS.

The registrar shall receive \$0.03 for each name registered in the new registration when ordered, and thereafter in the revision of the registration book, he shall receive one cent for each name copied from the original registration book. Each chairman of the county board of elections shall be allowed \$2.00 per day for the time actually employed, and \$0.05 cents per mile for distance traveled, for making the returns for senators, and each sheriff shall receive \$0.30 for each notice he is required to serve under the law providing for holding elections. The compensation allowed officers shall be paid by the county treasurer after being audited by the board of county commissioners. Clerks and registers of deeds shall also be allowed the usual registration fees for recording the election returns, to be paid by the county. The board of state canvassers may employ two clerks at a compensation of \$4.00 each per day, during the session of the board of state canvassers. The members of the county board of elections shall each be allowed \$2.00 per day for each day they may be actually employed in the performance of their duties. The registrars and judges of election shall be entitled to such compensation as may be fixed by the board of commissioners of their county, not to exceed \$2.00 each for holding the election. The election constables or bailiffs shall be entitled to \$1.00 per day each; and the registrar or judge of election, who shall act as returning officer, shall be allowed \$1.00, payable out of the county treasury: Provided, that the registrars shall receive, in addition to the compensation herein allowed for each name registered, the sum of \$2.00 per day for each Saturday during the period of registration, and on which they attend at the several polling places for the purpose of registering voters or receiving and hearing challenges: Provided further, that in addition to the compensation herein allowed the several election officers, it shall be lawful for the county commissioners to pay to the several members of the county board of elections and also to the several registrars such additional compensation as may be by them considered just and fair.—Rev., 2784; Laws 1907, c. 760.

ENTRY-TAKER.

Entry-takers shall receive the following fees, and no other, namely: For an entry, including all services, \$0.40; issuing each duplicate warrant, when thereto required, \$0.25; for posting and advertising, the applicant shall pay the entry-taker \$1.00, and the costs of the newspaper advertisement.—Rev., 2801.

JAILERS.

Jailers shall receive, for furnishing prisoner with fuel, one pound of wholesome bread, one pound of good roasted or boiled flesh, and a sufficient quantity of water, with every necessary attendance, a sum not exceeding \$0.25 per day, unless the board of commissioners of the county shall deem it expedient to increase the fees, which it may do provided such increase shall not exceed fifty per cent on the above sum. But whatever sum may be fixed on by the commissioners shall be recorded, and shall not be altered within one year thereafter.—Rev., 2799.

JURORS.

Jurors shall receive such sum as the county commissioners may fix, not exceeding \$1.50 for each day's attendance at court or inquest, and mileage at the rate of \$0.05 per mile; they shall also be allowed such ferriage and tolls as they may have necessarily incurred.

In Anson, Lenoir, New Hanover, Pender, Rutherford and Union counties the pay of jurors shall be \$1.50 per day and mileage.

In Greene County all regular and tales jurors shall receive \$2.00 per day.

In Gates and Forsyth counties, not less than \$1.50 and not more than \$2.00, as fixed by the county commissioners, and mileage.

The same pay shall be allowed to special jurors as talesmen, who shall be summoned to serve and do serve, but they shall not be allowed any mileage or ferriage. In Anson, Pender, Rutherford and Union counties the pay of talesmen shall be \$1.00 a day without mileage or ferriage.

In Currituck County, not exceeding \$1.50 and no mileage.

All who are summoned to appear as special veniremen, who do actually attend and who are not drawn as jurors shall be entitled to prove and receive one day's pay of \$1.00 each without mileage: This paragraph shall not apply to Rockingham, Durham, Franklin, Duplin, Ashe, Alleghany, Watauga, Cleveland, Macon, Clay, Cherokee, Graham, Richmond, Alexander, Sampson, Davidson, Pamlico, Davie, Stokes, Union, Iredell, McDowell, Caldwell, Haywood, Pasquotank, Yadkin, Currituck, Yancey, Tyrrell, Jones, Wayne, Pender, Madison, Alamance, Stanly, Cumberland, Catawba, Gaston, Hyde, Anson, Cabarrus, Lenoir, Lincoln, Dare, Mitchell, Rutherford, Jackson, Wilson and Nash. In Forsyth, Madison and Wake counties special veniremen shall also receive mileage and tolls or ferriage. In Greene County they shall receive \$0.75 per day.

The regular jurors for Pitt, Harnett, Halifax and Northampton counties and such special veniremen and tales jurors of said counties as shall be taken in the trial of capital cases shall be paid the sum of \$2.00 per day and the mileage provided by law.

The commissioners of the counties of Currituck and Martin are authorized, in their discretion, to pay all regular jurors summoned by their order \$2.00 per day and mileage, as now provided by the law.

All grand and petit and tales jurors summoned to attend and attending the superior courts of Chowan County shall receive per day what shall be allowed by the commissioners of Chowan County, not less than \$1.50 per day nor more than \$2.00 per day, and \$0.05 per mile for travel going to and returning from court, to be fixed by said commissioners.—Rev., 2798; Laws 1907, c. 88.

Any person appointed by any court or justice of the peace or summoned by any sheriff to allot or set apart to any widow a year's allowance under the statute, or to allot or assign to any widow dower in her husband's land, and who shall serve, shall be paid the sum of \$1.00 per day or fraction of day engaged, and the same shall be taxed as a part of the bill of costs of the proceeding.—Laws 1907, c. 223.

Note.—For jurors at inquests, see s. 1053 of the Revisal.

For jurors in ascertaining value of dividing fence, see s. 1666 of the Revisal.

JUSTICES OF THE PEACE.

Justices shall receive no fees whatever, except the following:

For attachment, \$0.20.

Transcript of judgment, \$0.10.

Summons, \$0.20; if more than one defendant in same case, for each additional, \$0.10.

Subpoena, for each witness, \$0.10.

Trial of an issue and judgment, \$0.40.

Taking an affidavit, bond or undertaking, or for an order of publication, or an order to seize property, \$0.25.

For jury trial and entering verdict, \$0.40.

Execution, \$0.20.

Renewal of execution, \$0.05.

Return to an appeal, \$0.30.

Order of arrest in civil action, \$0.20.

Warrant for arrest in criminal cases, or in bastardy, \$0.30.

Warrant of commitment, \$0.20.

Taking depositions on order or commission, per copy sheet \$0.10.

Garnishment for taxes, \$0.25. (See s. 2880 of the Revisal.)

Making necessary certificate and return to same, \$0.35.

For examination of woman in case of bastardy, \$0.25.

For hearing petition for widow's year's allowance, and issuing notice to commissioners, \$0.50.

For filing and docketing laborer's lien, \$0.50.

Probate of a deed or other writing proved by a witness, including the certificate, \$0.25; probate of a deed or other writing executed by a married woman for her acknowledgment and private examination, with the certificate thereof, \$0.25; probate of a deed or other writing acknowledged by the signers or makers, including all except married women who acknowledge at the same time, with the certificate thereof, \$0.25; probate of a chattel mortgage, including the certificate, \$0.10.

For issuing all necessary papers and copies thereof and for the trial of an action for claim and delivery, where there is one defendant, the sum of \$1.50, and \$0.50 for each additional defendant, and \$0.10 for each subpoena issued in said cause, and \$0.25 for taking the replevy bond when one is given: Provided, that where the trial of such cause shall have been removed from before the justice of the peace issuing the said papers, the justice of the peace sitting in the trial of such cause shall receive \$0.50 cents of the above costs for such trial and judgment.

For widow's year's allowance, \$1.00.—Rev., 2788; Laws 1907, c. 967.

NOTARY PUBLIC.

Notaries public and other persons acting as such shall be allowed the sum of \$0.50 for protesting for nonacceptance or for nonpayment, or for both when done at the same time, any order, draft, note, bond or bill or any other thing necessary to be protested, and the sum of \$0.10 for each notice sent in connection therewith. For other necessary services, where no fee is fixed, they shall be allowed \$0.20 for every ninety words. Cases of protest concerning vessels or other cargoes shall not be affected by this section.—Rev., 2800.

REGISTER OF DEEDS.

The register of deeds shall be allowed, while and when acting as clerk to the board of commissioners, such per diem as such board may respectively allow, not exceeding \$2.00; and shall be allowed the following fees for his services as register of deeds:

For registering any deed or other writing authorized to be registered by them, with certificate of probate or acknowledgment and private

examination of married woman, containing not more than three copy-sheets, \$0.80; and for every additional copy-sheet, \$0.10.

Registering chattel mortgage, statutory form, twenty cents.

Registering short form of lien bond, or lien bond and chattel mortgage combined, \$0.50 in the counties of Davidson, Franklin, Halifax, Northampton, Scotland, Vance and Union; \$0.20 in the counties of Anson, Chatham, Columbus, Cleveland, Iredell, Johnston and Mecklenburg; and \$0.30 in the counties of Alamance, Alleghany, Ashe, Beaufort, Bladen, Brunswick, Buncombe, Burke, Carteret, Caswell, Catawba, Chowan, Craven, Cumberland, Davie, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Granville, Harnett, Hertford, Jones, Lenoir, Lincoln, Martin, McDowell, Moore, Nash, New Hanover, Onslow, Pender, Perquimans, Person, Pitt, Polk, Richmond, Robeson, Rockingham, Rowan, Rutherford, Sampson, Washington, Watauga, Wayne and Wilson.

For comparing and certifying a copy of any instrument filed for registration when the copy is furnished by the party filing the instrument for registration and at the time of filing, \$1.00.

For a copy of any record or any paper in their offices, like fees as for registering the same.

For issuing each notice required by the county commissioners, including subpoenas for witnesses, \$0.15. This shall not include county orders issued on the treasury.

Recording and issuing each order of commissioners, \$0.10. Where a standing order is made for the payment of money, monthly or otherwise, there shall be charged but one fee therefor.

Making out original tax list, \$0.02 for each name thereon; for each name on each copy required to be made, \$0.02.

Issuing marriage license, \$1.00.

For transcript and certificate of limited partnership, \$0.50.

For recording the election returns from the various voting precincts, \$0.10 per copy-sheet, to be paid by the county.

For registering conditional sales of personal property in Nash County, \$0.35 on the first three hundred words and \$0.10 per copy-sheet on the excess of three hundred words.—Rev., 2776; Laws 1907, cc. 421, 636.

Note.—For fees in relation to strays, see Strays.

For registering affidavits of sales for taxes, see s. 2904 of the Revisal.

For short form of lien bond, see s. 2055 of the Revisal.

For salary of register of deeds of Guilford County, see 1905, c. 275.

For fees of register of deeds of Mecklenburg County, see 1905, c. 829, s. 2.

For Dare County act, see 1907, c. 206.

SHERIFFS.

Sheriffs shall be allowed the following fees and expenses, and no other, namely:

Executing summons or any other writ or notice, \$0.60; but the board of county commissioners may fix a less sum than \$0.60, but not less than \$0.30, for the service of each road order.

Arrest of a defendant in a civil action and taking bail, including attendance to justify, and all services connected therewith, \$1.00.

Arrest of a person indicted, including all services connected with the taking and justification of bail, \$1.00.

Imprisonment of any person in a civil or criminal action, \$0.30; and release from prison, \$0.30.

Executing a subpoena on a witness, \$0.30.

Conveying a prisoner to jail in another county, \$0.10 per mile.

For prisoner's guard, if any necessary, and approved by the county commissioners, going and returning, per mile for each, \$0.05.

Expense of guard and all other expenses of conveying prisoner to jail, or from one jail to another for any purpose, or to any place of

punishment, or to appear before a court or justice of the peace in another county, or in going to another county for a prisoner, to be taxed in the bill of costs and allowed by the board of commissioners of the county in which the criminal proceedings were instituted.

For allotment of widow's year's allowance, \$1.00.

In claim and delivery for serving the original papers in each case, \$0.60, and for taking the property claimed, \$1.00, with the actual cost of keeping the same until discharged by law, to be paid on the affidavit of the returning officer.

For conveying prisoners to the penitentiary, \$2.00 per day and actual necessary expenses; also \$1.00 a day and actual necessary expenses for each guard, not to exceed one guard for every three prisoners, as the sheriff upon affidavit before the clerk of the superior court of his county shall swear to be necessary for the safe conveyance of the convicts, to be paid by the state treasurer upon the warrant of the auditor, out of any money in the treasury not otherwise appropriated. The sheriff shall file with the auditor the affidavit above mentioned, together with a fully itemized account, to be sworn to before the auditor, showing the number of days requisite for coming and returning and the actual expense of conveying said convicts and the guard necessary for their safe-keeping, and if the auditor approves said account, he shall issue his warrant on the treasurer for the amount thereof.

Providing prisoners in county jail with suitable beds, bed-clothing, other clothing and fuel, and keeping the prison and grounds cleanly, whatever sum shall be allowed by the commissioners of the county.

Collecting fine and costs from convict, two and a half per cent on the amount collected.

Collecting executions for money in civil actions, two and a half per cent on the amount collected; and the like commissions for all moneys which may be paid to the plaintiff by the defendant while the execution is in the hands of the sheriff.

Advertising a sale of property under execution at each public place required, \$0.15.

Seizing specific property under order of a court, or executing any other order of a court or judge, not specially provided for, to be allowed by the judge or court.

Taking any bond or undertaking, including furnishing the blanks, \$0.50.

The actual expense of keeping all property seized under process or order of court, to be allowed by the court on the affidavit of the officer in charge.

A capital execution, \$10.00, and actual expenses of burying the body.

Summoning a grand or petit jury, for each man summoned, \$0.30, and \$0.10 for each person summoned on the special venire.

For serving any writ or other process with the aid of the county, the usual fee of \$1.00, and the expense necessarily incurred thereby, to be adjudged by the county commissioners, and taxed as other costs.

All just fees paid to any printer for any advertisement required by law to be printed.

Bringing up a prisoner upon habeas corpus, to testify or answer to any court or before any judge, \$1.00, and all actual and necessary expenses for such services, and \$0.10 per mile by the route most usually traveled, and all expenses for any guard actually employed and necessary.

For summoning and qualifying appraisers, and for performing all duties in laying off homesteads and personal property exemptions, or either, \$2.00, to be included in the bill of costs.

For levying an attachment, \$1.00.

For attendance to qualify jurors to lay off dower, or commissioners to lay off year's allowance, \$1.00; and for attendance, to qualify commissioners for any other purpose, \$0.75.

Executing a deed for land or any interest in land sold under execution, \$1.00, to be paid by the purchaser.

Service of writ of ejectment, \$1.00.

For every execution, either in civil or criminal cases, \$0.50.

Whenever any precept or process shall be directed to the sheriff of any adjoining county, to be served out of his county, such sheriff shall have for such service, not only the fees allowed by law, but a further compensation of \$0.05 for every mile of travel going to and returning from service of such precept or process: Provided, that whenever any execution of five hundred dollars or upwards shall be directed to the sheriff of an adjoining county, under this chapter, such sheriff shall not be allowed mileage, but only the commissions to which he shall be entitled.

The sheriff of Hyde County shall be allowed the sum of two dollars for serving all warrants or capias or other criminal processes on the waters of Pamlico sound or on the waters of any bay in Hyde County. Whenever such sheriff is compelled to go by boat or vessel a distance of more than two miles from any shore or landing in Hyde County to serve any civil process upon the waters of Pamlico sound or any bay in Hyde County, such sheriff, in addition to the fee prescribed by law for serving such process, may add the expense of hiring such boat or vessel, which cost or expense shall be taxed by the clerk of the superior court of the county from which such process issued in the bill of costs in the action in which such process issued. Sheriffs and constables of Hyde and Carteret counties shall receive three dollars for every process executed on board of any boat or vessel lying in the waters between Ocracoke island, Hyde County, and Portsmouth in Carteret County.—Rev., 2777.

Note.—For serving process from corporation commission, see s. 1071 of the Revisal.

For serving notice of garnishment for taxes, \$0.25 cents, see s. 2880 of the Revisal.

For sales for taxes, see s. 2883 of the Revisal.

For making memorandum of redemption of land sold for taxes, see s. 2013 of the Revisal.

For additional salary in Wayne County, see 1905, c. 374.

For salary in Guilford County, see 1905, c. 275.

For fees in Franklin County, see 1905, c. 345.

For fees for collecting taxes in Rowan County, see 1905, c. 376.

For compensation in Forsyth County, see 1905, c. 436.

For payment to sheriff for holding courts in Halifax County, see 1905, c. 386.

For Dare County act, see 1907, c. 206.

SOLICITORS.

The solicitors of the several judicial districts shall receive \$20.00 for each term of the superior court they shall attend, warrant by the auditor to issue therefor upon a certificate of such attendance from the clerk of the court; and the fees as prescribed in the following section:

The solicitors shall, in addition to the general compensation allowed them by the state, receive the following fees, and no other, namely:

For every conviction upon an indictment which they may prosecute for a capital crime, \$20.00.

For perjury, forgery, counterfeiting, passing or attempting to pass or sell any forged or counterfeited paper or evidence of debt; maliciously injuring or attempting to injure any railroad or railroad car, or any person traveling on such railroad car; stealing or obliterating records; stealing, concealing, destroying or obliterating any will; maliciously burning or attempting to burn houses or bridges; misdemeanors of accessories after the fact to felonies; in each of the above cases, \$10.00.

For larceny, receiving stolen goods, embezzlement, frauds, maims, deceits, and escapes, \$5.00.

For all other offenses, \$4.00.

The fees in all the above cases are to be taxed in the costs against

the party convicted; but where the party convicted is insolvent, the solicitor's fees shall be one-half, to be paid by the county in which the indictment was found, except that for convictions in capital felonies, forgery, perjury and conspiracy, when they shall receive full fees: Provided, that no larger fee than \$10.00 shall be taxed for the solicitor in any indictment against the justices of the peace of any county, as justices, when there are more than three justices who are found guilty.

The solicitors of the several judicial districts and criminal courts shall prosecute all penalties, and forfeited recognizances entered in their courts respectively, and as compensation for their services shall receive a sum to be fixed by the court, not more than five per cent of the amount collected upon such penalty or forfeited recognizance.

For performing his duty for the appointment of a receiver of an estate of a minor, they shall receive not to exceed \$10.00, to be fixed by the judge; and in passing on the returns of the receivers in such cases where the estate of the infant does not exceed five hundred dollars, the fee of the solicitor shall not exceed \$5.00, and where the estate exceeds five hundred dollars, his fee shall not exceed \$10.00, to be fixed by the judge, and in each case to be paid out of the fund.—Rev., 2767 and 2768.

Note.—For suits by corporation commission, see s. 1092 of the Revisal.

For fees for investigating lynchings, see s. 1288 of the Revisal.

STANDARD-KEEPER.

Standard-keepers shall be entitled to receive the following fees, and no other, namely: For examining and adjusting a pair of steelyards, \$0.25; every weight of half a pound and upwards \$0.05; every set of weights below half a pound, including one piece of each denomination, \$0.05; for yard stick, or other measure of cloth, \$0.05; every bushel, half-bushel, peck or other measure used in measuring grain, meal or salt, \$0.10; each measure for liquors or wines, \$0.03, and for extra work on bushel and half-bushel measures a sum not exceeding \$0.25 in any one case; and for every surveyor's chain, \$0.50.—Rev., 2780.

SURVEYORS AND CHAIN-CARRIERS.

Surveyors appointed by courts to survey any lands, the boundaries of which may come in question in any suit or proceeding pending therein, or called upon by the commissioners to assist in surveying and dividing the lands of intestates or others, held in common, shall receive the following fees, and no other, namely: For every survey on an entry containing three hundred acres or less, \$1.60, and for every hundred more than that quantity, \$0.40; for surveying lands in dispute, by order of court, traveling to and from the place, and performing the duty, \$2.00 per day, or such greater sum as the court may allow; for assisting in surveying and dividing the lands of intestates, or others, held in common, when called upon by the commissioners appointed to make partition, or in laying off dower; traveling to and from the place, and performing the duty \$2.00 per day. For assisting in surveying and allotting the homestead exemption of any person when summoned to do so by the sheriff or other lawful officer, for traveling to and from the place and performing the duty, \$2.00 per day, which shall be taxed in the bill of costs. In all surveys made by order of the court, the chain-carriers shall be allowed such compensation as the court may determine, not exceeding \$1.00 each per day; and in matters of disputed boundary, which may come in question, in any suit, the court may make to the surveyor such allowance for plots as it may deem reasonable, which, with the allowance to chain-carriers, shall be taxed as costs. The fees of the county surveyor of the counties of Rowan and Wayne shall be \$3.00 per day for all services done by them in their official capacity.—Rev., 2802.

Note.—For fees for registering surveys, see s. 1724 of the Revisal.

WITNESSES.

The fees of witnesses, whether attending at a term of court or before the clerk, or a referee, or commissioner, or arbitrator, shall be \$1.00 per day. They shall also receive mileage, to be fixed by the county commissioners of their respective counties, at a rate not to exceed five cents per mile for every mile necessarily traveled from their respective homes in going to and returning from the place of examination by the ordinary route, and ferriage and toll paid in going and returning. If attending out of their counties, they shall receive \$1.00 per day and \$0.05 per mile going and returning by the ordinary route, and toll and ferriage expenses. Provided, that witnesses before courts of justices of the peace shall receive fifty cents per day in civil cases, and in criminal actions of which justices of the peace have final jurisdiction, witnesses attending the courts of justices of the peace, under subpoena, shall receive \$0.50 per day, and in hearings before coroners witnesses shall receive \$0.50 per day and no mileage; but the party cast shall not pay for more than two witnesses subpoenaed to prove any one material fact, and no prosecutor or complainant shall pay any costs, unless the justice shall find that the prosecution was malicious and frivolous: Provided further, that experts, when compelled to attend and testify, shall be allowed such compensation and mileage as the court may in its discretion order. Witnesses attending before the corporation commission shall receive \$2.00 per day and \$0.05 per mile traveled by the nearest practicable route. All witnesses subpoenaed to attend courts of justices of the peace in Franklin County in the trial of civil or criminal cases in any township other than their resident townships, shall be paid the same per diem and mileage that is now paid witnesses attending the superior courts: Provided further, that practicing physicians of medicine when compelled to attend and testify in criminal actions in Iredell County shall be allowed \$5.00 per diem for all such attendance.—Rev., 2803.

For where county pays half fees, see s. 1283 of the Revisal.

For Wake County act as to payment of state witnesses in event of acquittal, nol. pros., arrest of judgment, not a true bill, judgment suspended, etc., see Laws 1907, c. 204.

MISCELLANEOUS PROVISIONS.

Clerks must keep fee bill posted.—Every clerk shall keep posted in his office in some conspicuous place the fee bill, for public inspection and reference, under a penalty of one hundred dollars for such neglect, to be paid to any person who will sue for the same.—Code, s. 3740; Rev., 2774.

Examining committee of treasurer's books.—The board of commissioners shall allow to the committee who examine the books and moneys of the treasurer the same pay per diem that is received by a member of the board, not to exceed pay for one day's service for each examination.—Rev., 2779.

Justices must itemize bills of cost.—Every justice of the peace shall, upon demand made, give to any party to an action before him, an itemized statement of the costs of such action. No person shall be compelled to pay any costs in any trial before a justice of the peace until an itemized statement of the costs has been made out and given to the party charged.—Rev., 2789.

For failure to give an itemized statement of costs on demand, see s. 3588 of the Revisal. See also s. 1257 of the Revisal.

Fees, by whom paid; when in advance.—The several officers named in this chapter shall receive the fees hereinbefore prescribed for them respectively, from the persons for whom, or at whose instance, the service shall be performed, except persons suing as paupers; and no officer shall be compelled to perform any service, unless his fee be

paid or tendered, except in criminal actions. The said officers shall receive no extra allowance or other compensation whatever, unless the same shall be expressly authorized by statute. In case the service shall be ordered by any proper officer of the state, or of a county, for the benefit of the state or county, the fees need not be paid in advance; but if for the state, shall be paid by the state, as other claims against it are; if for a county, by the board of commissioners, out of the county funds. The fees in criminal cases are not demandable in advance.—Rev., 2804.

Copy-sheet, what constitutes.—A copy-sheet shall consist of one hundred words, and in reckoning the number of words in a copy-sheet, every date, or amount of money, expressed in figures, as "1855," "\$250.90," shall be estimated and charged as one word.—Rev., 2805.

How fees of officers collected.—If any officer to whom fees are payable by any person shall fail to receive them at the time the service is performed, he may have judgment therefor on motion to the court in which the action is or was pending, upon twenty days notice to the person to be charged, at any time within one year after the termination of the action in which the same was performed; if the motion for the judgment be in behalf of the clerk of the superior court, it shall be made to the judge of the court in or out of term.—Rev., 1250.

PART VIII.

APPENDIX.

RULES FOR COMPUTING INTEREST.

CASE I.

To find the interest on any given principal, at any rate per cent, for any number of years.

What is the interest of \$425 for 5 years, at 6 per cent?

Analysis.—The interest of \$1 at 6 per cent for one year is 6 cents, or .06 of a dollar; then the interest of \$425 must be 425 times as much = 2,550 cents, or \$25.50; and if the interest for one year is \$25.50, then for 5 years it must be five times as much = \$127.50.

Operation.

\$425	Principal.
.06	Rate.
<hr/>	
\$25.50	= Interest for 1 year.
5	
<hr/>	
\$127.50	= Interest for 5 years.

Rule.

Multiply the principal by the rate, and the product will be the interest for one year; then multiply this product by the number of years.

To find the amount, add the principal to the interest.

CASE II.

To find the interest on any given principal, at any rate per cent for any number of years and months.

What is the interest of \$636 for 3 yr. 10 mo. at 6 per cent?

Analysis.—Since the interest of \$1 for a year is .06 of a dollar, then on \$636 it is 636 times as much = \$38.16; and for 3 years the interest is 3 times as much = \$114.48. Again, since the interest of \$636 for 1 year is \$38.16, then for 6 months it is one-half as much as for 6 months = \$19.08; and for 3 months it is one-half as much as for 6 months = \$9.54; and for 1 month it is one-third as much as for 3 months = \$3.18. Then adding the interest for the 3 years and 6 months and 3 months and 1 month, we obtain the interest for the whole time of 3 yr. 10 mo. = \$146.28.

Operation.

\$636	Principal.
.06	Rate.

\$38.16 = Interest for 1 yr.
3

\$114.48 = Interest for 3 yr.

6 mo. = $\frac{1}{2}$ yr. 19.08 = " " 6 mo.

3 mo. = $\frac{1}{2}$ of 6 mo. 9.54 = " " 3 mo.

1 mo. = 1-3 of 3 mo. 3.18 = " " 1 mo.

\$146.28 = " " 3 yr. 10 mo.

From the foregoing explanation we deduce the

Rule.

I. Multiply the principal by the rate per cent, and multiply this product by the number of years.

II. For months take such fractional parts of the interest for a year as are expressed by the number of months.

CASE III.

To find the interest on any given principal, at any rate per cent for any number of years, months and days.

What is the interest of \$756 for 2 yr. 5 mo. 20 da., at 6 per cent?

Analysis.—Since the interest of \$1 for a year is .06 of a dollar, then the interest of \$756 is 756 times as much = \$45.36, and for 2 years it is twice as much = \$90.72. Again, since the interest for 1 year is \$45.36, for 4 months it will be one-third as much as for a year = \$15.12, and for 1 month it will be one-fourth as much as for 4 months = \$3.78. Lastly, since the interest for 1 month is \$3.78, then for 15 days it will be one-half as much as for 1 month = \$1.89, and for 5 days it will be one-third as much as for 15 days = \$0.63. Adding these separate items of interest for 2 yrs., and for 4 mo., and for 1 mo., and for 15 days and 5 da., we have the whole interest for the required time of 2 yr. 5 mo. 20 da. = \$112.14.

Operation.

\$756	Principal.
.06	Rate.

\$45.36 = Interest for 1 yr.
2

\$90.72 = Interest for 2 yr.

4 mo. = 1-3 yr. 15.12 = " " 4 mo.

1 mo. = $\frac{1}{4}$ of 4 mo. 3.78 = " " 1 mo.

15 da. = $\frac{1}{2}$ of 1 mo. 1.89 = " " 15 da.

5 da. = 1-3 of 15 da. .63 = " " 5 da.

\$112.14 = " " 2 yr. 5 mo. 20 da.

From the preceding analysis we derive the

Rule.

I. Find the interest for years and months, as in Case II.

II. For days take such fractional parts of the interest for a month as are expressed by the number of days.

PARTIAL PAYMENTS.

When notes are running on interest payments are frequently made on them, which gradually reduce them until they are finally paid off. These payments are called partial payments, and as they are usually written on the back of the note, they are sometimes called endorsements.

For computing the balance due on a note on which partial payments have been made, a majority of the states of the Union have adopted a method founded on a decision of the supreme court of the United States.

United States Rule.

I. "The rule for casting interest when partial payments have been made is to apply the payment, in the first place, to the discharge of the interest then due.

II. "If the payment exceeds the interest, the surplus goes toward discharging the principal, and the subsequent interest is to be computed on the balance of the principal remaining due.

III. "If the payment be less than the interest, the surplus of interest must not be taken to augment the principal, but the interest continues on the former principal until the period when the payments, taken together, exceed the interest due, and then the surplus is to be applied toward discharging the principal, and the interest is to be computed on the balance as aforesaid."

Example.

Raleigh, N. C., January 22, 1869.

\$504. For value received, I promise to pay James B. Estes, or bearer, five hundred and four dollars, on demand, with interest. S. W. H.

On this note were the following endorsements:

January 25, 1870, received eighty-four dollars.

May 15, 1870, received one hundred dollars.

February 10, 1871, received two hundred dollars.

What was the balance due on this note at 6 per cent, July 5, 1871?

Operation.

Principal, bearing interest from June 10, 1869.....	\$504.00
Interest to first payment (7 mo. 15 da.).....	18.90
Amount to time of first payment	\$522.00
Deduct first payment	84.00
Balance due after first payment.....	\$438.90
Interest on balance to second payment (3 mo. 20 da.).....	8.04
Amount to time of second payment.....	\$446.94
Deduct second payment	100.00
Balance due after second payment.....	\$346.94
Interest on balance to third payment (9 mo. 5 da.).....	15.90
Amount to time of third payment.....	\$362.84
Deduct third payment	200.00
Balance due after third payment.....	\$162.84
Interest on balance to July 5, 1871 (4 mo. 15 da.).....	3.66
Balance due July 5, 1871.....	\$166.50

Observation.—By following the successive steps in the above operation, we see that the whole process consists in finding the amount of the principal to the time of the first payment—then deducting this

payment; then calling the remainder a new principal, we find its amount to the time of the second payment—then deduct this second payment; and continue this process to the time of final settlement. This rule will always hold good whenever each one of the payments equals or exceeds the interest. But instances often occur in which some of the payments are less than the interest. In such cases the foregoing method will not literally apply. We will give an example to illustrate the rule applicable in such cases.

Example.

Greensboro, N. C., March 15, 1868.

\$1200. Four months after date, I promise to pay Benjamin Siliman, or order, twelve hundred dollars, with interest, at 6 per cent, value received.

T. H. S.

The following credits were endorsed on this note:

November 15, 1868, received two hundred and forty dollars.

June 15, 1869, received twenty-four dollars.

April 30, 1870, received three hundred and sixty dollars.

January 30, 1871, received thirty dollars and forty-five cents.

November 10, 1871, received four hundred and fifty dollars.

What was the balance due on taking up this note, March 25, 1872?

Operation.

Principal, bearing interest from March 15, 1868.....	\$1200.00
Interest to first payment (8 mo.).....	48.00
Amount to time of first payment.....	\$1248.00
Deduct first payment	240.00
Balance due after first payment.....	\$1008.00
Interest from November 15, 1868, to second payment (7 mo.)	\$35.28
Second payment (less than interest).....	24.00
Leaving interest unpaid	\$11.28
Interest on same principal from June 15, 1869, to April 30, 1870 (10 mo. 15 da.).....	52.92
Aggregate of interest unpaid to third payment.....	64.20
Amount due on note to time of third payment.....	\$1072.20
Deduct third payment	360.00
Balance due after third payment.....	\$712.20
Interest from third payment to fourth payment (9 mo.)	\$32.05
Fourth payment (less than interest).....	30.45
Leaving interest unpaid	1.60
Interest from fourth payment to fifth payment (9 mo. 10 da.)	33.235
Aggregate of interest unpaid to November 10, 1871.....	34.835
Amount due on note to time of fifth payment.....	\$747.035
Deduct fifth payment	450.000
Balance due after fifth payment.....	\$297.035
Interest from fifth payment to final settlement (4 mo. 15 da.),	6.683
Balance due March 25, 1872	\$303.718

Observation.—In the above example we observe that two of the payments were less than the interest due at the time, and in each instance we subtracted the payment from the interest, and we set aside, temporarily, the interest which was still unpaid, and proceeded to calculate the interest on the same principal to the time of the next payment. The student may perhaps inquire: "Why did you not add the interest to the principal, and then deduct the payment, as you did before?" The answer is: That the principal would have been increased by the difference between the payment and the interest, and in computing interest on this increased principal we should have violated a rule sanctioned by the decisions of courts, viz., that "Interest must not be calculated upon interest."

Note.—With reference to the above, attention is called to the following decision of our supreme court, rendered in 1873, Chief Justice Pearson delivering the opinion of the court:

"Where a promissory note is given, with stipulation that the interest is to be paid annually, or semi-annually, the maker is chargeable with interest at the like rate upon each deferred payment of interest as if he had given a promissory note for the amount of such interest. By this mode of computation, compound interest is not given, but a middle course is taken between simple and compound interest."—*Bledsoe v. Nixon*, 69—89.

3406. Profane swearing in hearing of justice punished as contempt. If any person shall profanely swear or curse in the hearing of a justice of the peace, holding court, the justice may commit him for contempt or fine him not exceeding five dollars.—Rev., 1426.

APPEALS.

1. Generally.

3407. Writs of error abolished. Writs of error in civil actions are abolished; and the only mode of reviewing a judgment, or order, in civil action, shall be that prescribed by this chapter.—Rev., 583.

3408. Certiorari, recordari and supersedeas. Writs of certiorari, recordari and supersedeas are hereby authorized as heretofore in use. The writs of certiorari and recordari, when used as substitutes for an appeal may issue when ordered upon the applicant filing a written undertaking for the costs only; but the supersedeas, to suspend execution, shall not issue until an undertaking is filed or a deposit made to secure the judgment sought to be vacated, as in cases of appeal where the execution is stayed.—Rev., 584.

3409. Who may appeal. Any party aggrieved may appeal in the cases prescribed in this chapter.—Rev., 585.

3410. In what cases taken. An appeal may be taken from every judicial order or determination of a judge of a superior court upon or involving a matter of law or legal inference, whether made in or out of term, which affects a substantial right claimed in any action or proceeding; or which in effect determines the action, and prevents a judgment from which an appeal might be taken; or discontinues the action, or grants or refuses a new trial.—Rev., 587.

NOTE.—For appeal in creditors' proceeding against personal representative, see s. 119 of Revisal.

3411. From judge in special proceedings. Any party, within ten days after notice of such judgment, may appeal to the supreme court of the state from such judgment, upon any matter of law or legal inference therein, under the regulations provided for appeals in other cases. But execution shall not be suspended until the undertakings required by law shall have been given. If issues, both of law and of fact or issues of fact only, are raised before the clerk of the superior court, he shall transfer the case to the civil issue docket for trial of the issues at the ensuing term of the superior court.—Rev., 588.

3412. Interlocutory orders reviewed on appeal from judgment. Upon an appeal from a judgment, the court may review any intermediate order involving the merits and necessarily affecting the judgment.—Rev., 589.

2. To the Supreme Court.

3413. When taken; execution stayed, when. The appeal must be taken from a judgment rendered out of term within ten days after notice thereof, and from a judgment rendered in term within ten days after its rendition, unless the record shows an appeal taken at the trial, which shall be sufficient, but execution shall not be suspended until the giving by the appellant of the undertakings hereinafter required.—Rev., 590.

3414. Entered on docket; case on appeal, how stated and settled; penalty on judge failing to settle. Within the time prescribed in the preceding section, the appellant shall cause his appeal to be entered by the clerk on the judgment docket, and notice thereof to be given to the adverse party unless the record shows an appeal taken or prayed at the trial, which shall be sufficient. He shall cause to be prepared a concise statement of the case, embodying the instructions of the judge

as signed by him, if there be an exception thereto, and the requests of the counsel of the parties for instructions if there be any exception on account of the granting or withholding thereof, and stating separately in articles numbered, the errors alleged. A copy of this statement shall be served on the respondent within fifteen days from the entry of the appeal taken; within ten days after such service the respondent shall return the copy with his approval or specific amendments indorsed or attached; if the case be approved by the respondent, it shall be filed with the clerk as a part of the record; if not returned with objections within the time prescribed, it shall be deemed approved; if returned with objections as prescribed, the appellant shall immediately request the judge to fix a time and place for settling the case before him; and the judge shall forthwith notify the attorneys of the parties to appear before him for that purpose at a certain time and place, within the judicial district, which time shall not be more than twenty days from the receipt of such request; and at the time and place stated, the judge shall settle and sign the case, and deliver a copy to the attorney of each party, or if the attorneys be not present, file a copy in the office of the clerk of the court: Provided, that if the judge shall have left the district before the notice of disagreement, he may settle the case without returning to the district. In settling the case, the written instructions signed by the judge, and the written requests for instructions signed by the counsel, and the written exceptions shall be deemed conclusive as to what such instructions, requests and exceptions were. If a copy of the case settled was delivered to the appellant, he shall within five days thereafter file the same with the clerk, and in case he fails to do so, the respondent may file his copy. The judge shall settle the case on appeal within sixty days after the termination of a special term or after the courts of the district shall have ended, and if the judge in the meantime shall have gone out of office, he shall settle the case as if he were still in office, and any judge failing to comply with this section shall be liable to a penalty of five hundred dollars, for the use of any person who will sue for the same. If the appellant in an appeal in a civil action from the superior to the supreme court shall delay longer than fifteen days after the appellee serves his counter-case, or exceptions, to request the judge to settle the case on appeal and mail the case and counter-case, or exceptions, to the judge, then the exceptions filed by the appellee shall be allowed, or the counter-case served by him shall constitute the case on appeal: Provided, the time may be extended by agreement.—Rev., 591; Laws 1907, c. 312.

3415. Clerk to prepare transcript. The clerk on receiving a copy of the case settled, as required in the preceding section, shall make a copy of the judgment roll and of the case, and within twenty days transmit the same, duly certified to the clerk of the supreme court. The clerk, except in cases where parties are allowed to appeal without giving an undertaking on appeal, shall not be required to make the copy of the record in the case for the supreme court until the appellant shall have given the undertaking on appeal or made the deposit required.—Rev., 592.

3416. Undertaking on appeal; filed in supreme court, when. To render an appeal effectual for any purpose in any civil cause or special proceeding, a written undertaking must be executed on the part of the appellant, with good and sufficient surety, in such sum as may be ordered by the court, not to exceed the sum of two hundred and fifty dollars to the effect that the appellant will pay all costs which may be awarded against him on the appeal; or such sum as may be ordered by the court must be deposited with the clerk by whom the judgment or order was entered, to abide the event of the appeal; such undertaking

or deposit may be waived by a written consent on the part of the respondent. No appeal shall be dismissed in the supreme court on the ground that the undertaking on appeal was not filed earlier or the deposit made earlier, if the undertaking shall be filed or such deposit made before the record of the case is transmitted by the clerk of the superior court to the supreme court. And when no undertaking on appeal has been filed, or deposit made before the record of the case is transmitted to the supreme court, the supreme court shall, upon good cause being shown, on such terms as may be just, allow the appellant to file an undertaking or make the deposit.—Rev., 593.

3417. Justification of sureties. An undertaking upon an appeal must be accompanied by the affidavit of one of the sureties that he is worth double the amount specified therein. The respondent may, however, except to the sufficiency of the sureties within ten days after the notice of the appeal; and unless they or other sureties justify within ten days thereafter, the appeal shall be regarded as if no undertaking had been given. The justification shall be upon a notice of not less than five days.—Rev., 594.

3418. Undertaking to be filed with clerk. The undertaking must be filed with the clerk with whom the judgment or order appealed from was entered. This chapter as to the security to be given upon appeals, and as to the stay of proceedings, shall apply to all appeals taken to the supreme court.—Rev., 595.

3419. Notice of motion to dismiss for irregularity; new bond or deposit. Before the appellee shall be permitted to move to dismiss an appeal, either for any irregularity in the undertaking on appeal, or for failure of the sureties to justify, he shall give written notice to the appellant of such motion to dismiss at least twenty days before the district from which the cause is sent up is called, which shall state the grounds upon which the motion is based. In all such cases at least five days before the district from which the cause is sent up is called, the appellant may file with the clerk of the supreme court a new bond justified according to law. The penalty in the new bond shall be the same in amount as the penalty in the original bond, or in lieu of filing such new bond the appellant may deposit with the clerk of the supreme court a sum of money equal to the penalty in the original bond. When a new bond has been thus filed or deposit made the cause shall stand as if the bond had been duly given or deposit duly made in the court below.—Rev., 596.

3420. Appeals in forma pauperis. When any party to a civil action tried and determined in the superior court shall, at the time of trial, desire an appeal from the judgment rendered in said action to the supreme court, and shall be unable, by reason of his poverty, to make the deposit or to give the security required by law for said appeal, it shall be the duty of the judge or clerk of said superior court to make an order allowing said party to appeal from said judgment to the supreme court as in other cases of appeal, without giving security therefor: Provided, that the party desiring to appeal from said judgment shall within five days make affidavit that he is unable by reason of his poverty to give the security required by law for said appeal, and that said party is advised by counsel learned in the law that there is error in matter of law in the decision of the superior court in said action: Provided further, that said affidavit shall be accompanied by a written statement from a practicing attorney of said superior court that he has examined the affiant's case, and that he is of opinion that the decision of the superior court, in said action, is contrary to law: Provided, that the appeal when passed upon and granted by the clerk shall be within ten days from the expiration by law of said term of court. In all civil cases where a party is now allowed by law to appeal

to the supreme court in forma pauperis, or without giving an undertaking or making the deposit for the cost on appeal as provided by law, the clerk of the superior court shall not be allowed to demand his fees of such party for the transcript of the record for the supreme court: Provided, such appellant shall furnish to the clerk of the superior court two true and correct typewritten copies of such records on appeal: And provided further, that nothing contained in the provisions of this act shall be construed to deprive the clerk of the superior court of his right to demand his fees for his certificate and seal as now allowed by law in such cases.—Rev., 597; Laws 1907, c. 878.

3421. Undertaking to stay proceedings, money demand; perishable property sold. If the appeal be from a judgment directing the payment of money it shall not stay the execution of the judgment unless a written undertaking be executed on the part of the appellant, by one or more sureties, to the effect that if the judgment appealed from, or any part thereof, be affirmed, or the appeal be dismissed, the appellant will pay the amount directed to be paid by the judgment, or the part of such amount as to which the judgment shall be affirmed, if it be affirmed only in part, and all damages which shall be awarded against the appellant upon the appeal. Whenever it shall be satisfactorily made to appear to the court that since the execution of the undertaking the sureties have become insolvent, the court may, by rule or order, require the appellant to execute, file and serve a new undertaking, as above; and in case of neglect to execute such undertaking within twenty days after the service of a copy of the rule or order requiring such new undertaking, the appeal may, on motion to the court be dismissed with costs. Whenever it shall be necessary for a party to any action or proceeding to give a bond or an undertaking with surety or sureties, he may, in lieu thereof, deposit with the officer into court as the case may require, money to the amount for which such bond or undertaking is to be given. The court in which such action or proceeding is pending may direct what disposition shall be made of such money pending the action or proceeding. In any case where, by this section, the money is to be deposited with an officer, a judge of the court at any time, upon the application of either party, may, before such deposit is made, order it to be deposited in court instead of with such officer; and a deposit made, pursuant to such order, shall be of the same effect as if made with such officer. The perfecting of an appeal by giving the undertaking mentioned in this section shall stay proceedings in the court below upon the judgment appealed from; except when the sale of perishable property is directed, the court below may order the property to be sold and the proceeds thereof to be deposited or invested, to abide the judgment of the appellate court.—Rev., 598.

3422. Property deposited in court to stay proceedings, when. If the judgment appealed from direct the assignment or delivery of documents or personal property, the execution of the judgment shall not be stayed by appeal, unless the things required to be assigned or delivered be brought into court, or placed in the custody of such officer or receiver as the court shall appoint, or unless an undertaking be entered into on the part of the appellant, by at least two sureties, and in such amount as the court or a judge thereof shall direct, to the effect that the appellant will obey the order of the appellate court upon the appeal.—Rev., 599.

3423. Conveyance executed to stay proceedings, when. If the judgment appealed from direct the execution of a conveyance or other instrument, the execution of the judgment shall not be stayed by the appeal until the instrument shall have been executed and deposited with the clerk with whom the judgment is entered, to abide the judgment of the appellate court.—Rev., 600.

3424. Proceedings stayed in possessory action and foreclosure, how. If the judgment appealed from the direct sale or delivery of possession of real property, the execution of the same shall not be stayed, unless a written undertaking be executed on the part of the appellant, with one or more sureties, to the effect that, during the possession of such property by the appellant, he will not commit, or suffer to be committed, any waste thereon, and that if the judgment be affirmed he will pay the value of the use and occupation of the property, from the time of the appeal until the delivery of possession thereof, pursuant to the judgment, not exceeding a sum to be fixed by a judge of the court by which judgment was rendered, and which shall be specified in the undertaking. When the judgment is for the sale of mortgaged premises, and the payment of a deficiency arising upon the sale, the undertaking shall also provide for the payment of such deficiency.—Rev., 601.

3425. Extent of stay; security limited for fiduciaries. Whenever an appeal is perfected as provided by this chapter it stays all further proceedings in the court below upon the judgment appealed from, or upon the matter embraced therein; but the court below may proceed upon any other matter included in the action and not affected by the judgment appealed from. And the court below may, in its discretion, dispense with or limit the security required, when the appellant is an executor, administrator, trustee, or other person acting in another's right; and may also limit such security to an amount not more than fifty thousand dollars, where it would otherwise exceed that sum.—Rev., 602.

3426. Undertaking in one instrument or several; served on appellee. The undertakings may be in one instrument or several, at the option of the appellant; and a copy, including the names and residences of the sureties must be served on the adverse party, with the notice of appeal, unless the required deposit is made, and notice thereof given.—Rev., 603.

3427. Judgment not vacated by stay of proceedings. The stay of proceedings provided for in this chapter shall not be construed to vacate the judgment appealed from, but in all cases said judgment shall remain in full force and effect, and the lien of said judgment shall remain unimpaired notwithstanding the giving of the undertaking or making the deposit required in this chapter until the judgment appealed from is reversed or modified by the supreme court.—Rev., 604.

3428. Judgment on appeal and on undertakings; restitution. Upon an appeal from a judgment or order, the appellate court may reverse, affirm or modify the judgment or order appealed from, in the respect mentioned in the notice of appeal, and as to any or all of the parties, and may, if necessary or proper, order a new trial. When the judgment is reversed or modified, the appellate court may make complete restitution of all property and rights lost by the erroneous judgment. Undertakings for the prosecution of appeals and on writs of certiorari shall make a part of the record sent up to the supreme court on which judgment may be entered against the appellant or person prosecuting the writ of certiorari and his sureties, in all cases where judgment shall be rendered against the appellant or person prosecuting said writ.—Rev., 605.

NOTE.—See s. 1542 et seq. of Revisal.

3. From Justices of the Peace.

3429. Plaintiff's cost bond on appeal from justice. When any defendant shall appeal from the judgment of a justice of the peace to the superior court, or when the judgment of such justice shall be removed by the defendant, by recordari or otherwise, to a superior court, the court having cognizance of such appeal or recordari may, upon suffi-

cient cause shown by affidavit, compel the plaintiff to give an undertaking, with sufficient surety, for payment of the costs of the suit, in the event of his failing to prosecute the same with effect.—Rev., 606.

3430. Appeal from justice heard de novo; judgment by default, when; appeal dismissed. When an appeal shall be taken from the judgment of a justice of the peace to a superior court, the same shall be reheard by the court; whereupon an issue shall be made up and tried by a jury at the first term to which it is returned, unless continued; and judgment shall be given therein against the party cast and his sureties. And when the defendant shall make default, the plaintiff in actions instituted on a single bond, a covenant for the payment of money, bill of exchange, promissory note, or a signed account, shall have judgment, and in other cases may have his inquiry of damages executed forthwith by a jury: Provided, that if the appellant shall fail to have his appeal docketed as required by law, the appellee may, at the term of said court next succeeding the term to which the appeal is taken, have the case placed upon the docket, and upon motion the judgment of the justice shall be affirmed and judgment rendered against the appellant accordingly, and for the costs of appeal and against his sureties upon the undertaking, if there be any, according to the conditions thereof: Provided further, that nothing herein shall be construed to prevent the granting the writ of recordari in cases now allowed by law.—Rev., 607.

3431. Clerk to docket appeal from justice for trial de novo. When the return is made the clerk of the appellate court shall docket the case on his trial docket for a new trial of the whole matter at the ensuing term of said court.—Rev., 608.

3432. Appeal from justice heard on original papers. The appeal shall, in all cases, be heard on the original papers, and no copy thereof need be furnished for the use of the appellate court.—Rev., 609.

4. From the Clerk of the Superior Court.

3433. Appeal from the clerk. Any party may appeal from any decision of the clerk of the superior court on an issue of law or legal inference to the judge without undertaking.—Rev., 610.

3434. When taken; who may take. An appeal must be taken within ten days after the entry of the order or judgment of the court; but an appeal can only be taken by a party aggrieved who appeared and moved for or opposed the order or judgment appealed from, or who being entitled to be heard thereon, had no notice or opportunity to be heard; which fact may be shown by affidavit or other proof.—Rev., 611.

3435. Duty of clerk on appeal prayed. On such appeal the clerk, within three days thereafter, shall prepare a statement of the case, of his decision, and of the appeal and shall sign the same; he shall, within the time aforesaid, exhibit such statement to the parties or their attorneys on request; if such statement is satisfactory, the parties or their attorneys shall sign the same; if either party object to the statement as partial or erroneous, he may put his objections in writing, and the clerk shall attach such writing to his statement, and within two days thereafter he shall send such statement, together with the objections, and copies of all necessary papers, by mail or otherwise, to the judge residing in the district, or in his absence to the judge holding the courts of the district, for his decision.—Rev., 612.

3436. Duty of judge on appeal. It shall be the duty of the judge on receiving a statement of appeal from the clerk, or the copy of the record of an issue of law, to decide the questions presented within ten days. But if he shall have been informed in writing, by the attorney of either party, that he desires to be heard on the questions, the judge

shall fix a time and place for such hearing, and give the attorneys of both parties reasonable notice thereof. He shall transmit h's decision in writing, endorsed on, or attached to the record to the clerk of the court, who shall immediately acknowledge the receipt thereof, and within three days after such receipt, notify the attorneys of the parties of the decision and on request and the payment of his legal fees, give them a copy thereof, and the parties receiving such notice may proceed thereafter according to law.—Rev., 613.

3437. Judge determines entire controversy; may recommit. Whenever any civil action or special proceeding begun before the clerk of any superior court shall be for any ground whatever sent to the superior court before the judge, the judge shall have jurisdiction; and it shall be his duty, upon the request of either party, to proceed to hear and determine all matters in controversy, in such action, unless it shall appear to him that justice would be more cheaply and speedily administered by sending the action back to be proceeded in before the clerk, in which case he may do so.—Rev., 614.

3438. From clerk to judge. Appeals shall lie to the judge of the superior court having jurisdiction, either in term time or vacation, from judgments of the clerk of the superior court in all matters of law. In case of such transfer or appeal neither party shall be required to give an undertaking for costs; and the clerk shall transmit, on such transfer or appeal, to the superior court, or to the judge thereof, the pleadings, or other papers, on which the issues of fact or of law arise. An appeal must be taken within ten days after the entry of the order or judgment of the clerk. But an appeal can only be taken by a party aggrieved, who appeared and moved for, or opposed the order or judgment appealed from, or who, being entitled to be heard thereon, had no opportunity of being heard, which fact may be shown by affidavit or other proof.—Rev., 586.

INDEX TO STATUTES.

(References are to sections.)

	Section
Abandonment of wife and children	299 to 301
of children forfeits right to custody.....	1506
as ground for divorce.....	2125, 2126
Abatement of action, none, when	905
Abduction, of children	302, 303
of children by parents.....	318
of married woman.....	304
Abortion	573, 574
Abrogation of certain constitutional provisions	3
Accessories, before the fact	230, 231, 233
after the fact.....	232
Account, where action is on, pleading	56
magistrate may require party to exhibit.....	60
current, limitation of action on.....	865
(and notes under 860.)	
action on settled, triable at first term.....	974
items of, need not be in pleading.....	56, 984
copy of, evidence when.....	2188, 2187
book-accounts	2185, 2187
verified, itemized statement of, prima facie evidence.....	2188
Acre, measurements of	3322
Actions, removable from a justice	46, 47
justice to dismiss, when.....	30, 32
another, may be brought in Superior Court.....	33
for recovery of damages to real estate.....	67
application for rehearing of, in magistrate's court.....	69
in magistrate's court against defendant in another county	38
definition and division of.....	835, 838 to 840
parties to, defined.....	844
limitation of. See "Limitation of Actions."	
parties to. See "Parties to Civil Actions."	
but one form of.....	843
appearance in	845
feigned issues abolished	846
jurisdiction of clerk on procedure.....	847
when not to abate.....	905
where tried. See "Place of Trial."	
removable from one county to another.....	915 to 918
when deemed commenced.....	919
manner of commencing.....	919
certain, to be triable at first term.....	974
relief in, may be asked in vacation.....	1046
pleadings in civil.....	955 to 1005
joinder of causes of.....	959
misjoinder, action divided.....	966
reference of	1006 to 1013
trial of.....	1014 to 1030
when stand for trial.....	974

(See also Index to Forms.)

(References are to sections.)

Actions (continued).	Section
trial of, postponed.....	1018 to 1020, 63
costs in.....	1926 to 1985
submitting a controversy without.....	1295 to 1297
confession of judgment without.....	1068 to 1070
offer of compromise of.....	1290 to 1294, 62
nonsuit not allowed after verdict.....	2108
death between verdict and judgment.....	1051
on account or note, evidence in.....	56
rehearing before justice.....	69
compromise of.....	1290 to 1294
examination of parties.....	1298 to 1306
surveys ordered in.....	2093
rights of, to survive.....	1482 to 1484
to determine conflicting claims to land.....	1614 and 1615

Administration

Necessity for.

penalty; what family may use.....	1326
executor de son tort.....	1327

To whom granted.

order in which persons entitled.....	1328
husband on wife's estate; his interest therein.....	1329
disqualifications	1330
when disqualified persons entitled.....	1331
forfeiture by divorce or felonious slaying.....	1332
elopement and adultery of wife forfeits right.....	1333
how husband forfeits right as to wife's estate.....	1334
executor may renounce.....	1335
when renunciation required.....	1336
when person entitled deemed to have renounced.....	1337
when executor deemed to have renounced.....	1338

Will annexed.

letters with, issued when.....	1339
qualification of administrators with.....	1340

Jurisdiction.

of clerk of superior court.....	1341
what clerk has exclusive.....	1342

Public administrator.

how appointed	1343
takes and subscribes oath; gives bond.....	1344
when letters issue to.....	1345
powers; duties; when term expires.....	1346

Collectors.

when and how appointed.....	1347
qualification; bond	1348
authority	1349
authority ceases, when; duty to account.....	1350

Application for letters.

what to contain.....	1351
how contest over, instituted.....	1352
executor gives bond, when.....	1353
oath taken; bond given.....	1354
persons injured may sue on bond.....	1355
letters revoked, bond liable to successor for default.....	1356
when new bond or new sureties required.....	1357
remedy of surety in danger of loss.....	1358
failing to give new bond, letters revoked.....	1359

(See also Index to Forms.)

(References are to sections.)

Administration (continued).	Section
Application for letters.	
letters revoked; successor appointed; estate protected....	1360
form of letters.....	1361
Revocation.	
on proof of will.....	1362
for disqualification or default.....	1363
Advertisement for creditors.	
advertisement for claims, when and how made; cost.....	1364
how proved	1365
notice may be served on creditor personally.....	1366
Inventory.	
taken and returned within three months.....	1367
how compelled	1368
new assets inventoried.....	1369
What are assets.	
distinction between legal and equitable abolished.....	1370
trust estate in personalty.....	1371
crops ungathered at death.....	1372
what proceeds of real estate deemed personal assets.....	1373
what proceeds of real estate deemed real assets.....	1374
personalty fraudulently conveyed recovered.....	1375
debt of executor not discharged by appointment.....	1376
heirs jointly liable for debts, when.....	1377
limit of liability of heir.....	1378
recovery apportioned among heirs.....	1379
priority of debts as affecting liability of heir.....	1380
defense, other debts of equality or priority.....	1381
debts paid, estimated as unpaid in suit against heir, when.	1382
contribution among devisees, where heir is liable.....	1383
Wrongful death.	
action for wrongful death; recovery not assets.....	1384
measure of damages in wrongful death.....	1385
Sales of personalty.	
by collector, only on order of court.....	1386
as soon as practicable.....	1387
public, how made.....	1388
private, how made.....	1389
on credit; how proceeds secured.....	1390
public, hours of; penalty	1391
evidences of debt, when and how sold.....	1392
Sales of realty.	
to pay debts when personalty insufficient.....	1393
undevised first sold.....	1394
conveyances by heir within two years of letters.....	1395
conveyed to personal representatives; power of successor	1396
conveyed in fraud of creditors.....	1397
fraudulent grantee, selling innocent purchaser, liable....	1398
heirs and devisees necessary parties to proceeding.....	1399
infants defend by guardian; must answer.....	1400
adverse claimant may be heard.....	1401
what petition for, must show.....	1402
issue joined, cause transferred to term.....	1403
petition not denied, order made.....	1404
what order contains; what title made.....	1405
how advertised	1406
lands devised to be sold by executor, who may sell.....	1407
land sold by decedent, who makes deed.....	1408

(See also Index to Forms.)

(References are to sections.)

Administration (continued).	Section
Sales of realty (continued).	
under will, may be public or private.....	1409
realty bought for estate, when.....	1410
specifically devised, devisee entitled to contribution.....	1411
Debts, proved and paid.	
order of payment.....	1412
no preference in the class.....	1413
debts due executor not preferred.....	1414
debts not due, how paid.....	1415
affidavit as to debt may be required.....	1416
disputed debt may be referred.....	1417
disputed debt not referred, barred in six months.....	1418
claims not presented in twelve months, administrator not liable	1419
no lien suit against representative.....	1420
payment of debts out of class, when valid.....	1421
costs against executors, when allowed.....	1422
bonds which bind heir.....	1423
Accounts.	
annual	1424
failure to file, how compelled.....	1425
vouchers presumptive evidence.....	1426
vouchers for gravestones; when cost exceeds \$100.....	1427
final account	1428
trustees under wills required to file inventories and ac- counts	1429
Accounting compelled.	
by special proceeding by creditor.....	1430
what rules govern.....	1431
when and where summons returnable.....	1432
clerk to advertise for creditors, when.....	1433
how advertisement published.....	1434
creditors to file claims; appoint agent.....	1435
how claims proven.....	1436
representative to file claims; notice to creditors.....	1437
clerk to exhibit claims to representative.....	1438
representative denying claim, notice to creditor.....	1439
issues joined, cause docketed for hearing.....	1440
costs paid by representative personally, when.....	1441
representative failing to appear, procedure	1442
clerk to state an account.....	1443
account stated; examined; excepted to; signed.....	1444
either party may appeal; security given for costs.....	1445
papers filed; cause docketed for trial.....	1446
certain creditors may docket judgments, when.....	1447
judgment, if assets sufficient to pay a class.....	1448
judgment, if assets insufficient to pay a class.....	1449
what judgment contains; execution.....	1450
when judgment to fix with assets.....	1451
form and effect of execution.....	1452
report evidence of assets only as of its date.....	1453
assets subsequent to report, how shown.....	1454
suit for accounting or debt brought to term.....	1455
personal assets insufficient, land proceeded against.....	1456
proceedings to sell real estate, how conducted.....	1457
Distribution.	
order of distribution.....	1458

(See also Index to Forms.)

(References are to sections.)

Administration (continued).	Section
Distribution (continued).	
advancements accounted for.....	1459
children advanced to render schedule.....	1460
children refusing to account for advances not to share....	1461
illegitimate children next of kin to mother.....	1462
illegitimate children next of kin to each other.....	1463
After-born children.	
share in realty, in what allotted.....	1464
share in personalty, in what allotted.....	1465
share in personalty, when allotted in proceeds of realty...	1466
decree of contribution for share in realty, effect of.....	1467
when deemed legatee or devisee.....	1468
if no petition filed, how estate settled.....	1469
Settlement.	
legacies and distributive shares; how recovered.....	1470
distributive shares paid to clerk when.....	1471
clerk to give receipt under seal.....	1472
must be made at end of two years.....	1473
what may be retained.....	1474
commissions allowed; proviso.....	1475
petition may be filed for.....	1476
fund due absent party or infant without guardian paid to court; party not heard of in seven years, procedure....	1477
liability and compensation of clerk.....	1478
when paid to university.....	1479
who parties to proceeding for settlement.....	1480
legacies ordered paid within two years, when.....	1481
Actions by and against representative.	
right of action survives to, and against.....	1482
actions which do not survive.....	1483
right of action survives to successor.....	1484
may maintain any appropriate action to recover assets....	1485
must be in representative capacity.....	1486
appearance by, or service on, one binds all.....	1487
action against, when; execution issues, how.....	1488
service by publication, when.....	1489
successor may issue execution, when.....	1490
letters revoked action continues.....	1491
Miscellaneous provisions.	
how personal representative holds.....	1492
personal representative liable.....	1493
bona fide administration under act of 1868-9 validated....	1494
time in which act to be done may be extended.....	1495
powers under will not affected; proviso.....	1496
causes transferred to superior court, when.....	1497
estates prior to certain dates.....	1498
to what estates this chapter applicable.....	1499
Administrators. See "Executors" and "Administration."	
Administrator, Public. See "Administration."	
Admission of writings.....	2219 to 2221
Admitted trust funds, protected.....	1307, 1308
Admitted claim, ordered satisfied.....	1309
Adoption of minor children. Petition to be filed.....	1500
order of court.....	1502
effect of order.....	1503

(See also Index to Forms.)

(References are to sections.)

Adoption of minor children (continued).	Section
bond to be given, when.....	1504
order to be recorded.....	1505
parent or guardain must be party.....	1501
Adulteration, of food	393
of drugs	603
of spirituous liquors.....	465
Adultery, punishment for	294
by husband forfeits right to administer.....	1334
by wife forfeits distributive share and right to administer.....	1333
of husband; effect on property rights.....	1334
as ground for divorce.....	2125
Advancements, to be accounted for by children of intestate 1459 to	1461
of surplus income of insane persons.....	2422 to 2431
Advances, lien on crop in favor of those making	2620
Advertisement, destruction of	664, 665
mutilation of	664, 665
Affidavits, may be taken by clerks and notaries	1671
taken by clerks courts record other states.....	1677
may be taken in support of motions.....	1312
commissioners of.....	1672 to 1677
Agreed case	1295 to 1297
Aliens, rights of with relation to land	1508, 1509
Amendments, allowed in magistrates court	59
of magistrate's return to notice of appeal.....	85
of course after demurrer.....	994
allowed in superior court.....	994 to 1002
Animals. See "Cruelty to Animals" and "Cattle."	
Answer, in magistrate's court	51
in superior court, when filed.....	960 to 963
reply to	974 to 976
when, denies action for purchase-money, jury trial.....	970
may take advantage of objection not demurred to, when..	967
what to contain.....	969
counter-claim	971
several defences	972
demur to part and answer part.....	961
sham and irrelevant defences.....	962
contributory negligence to be pleaded and proved.....	973
Appeal.	
Generally.	
by prisoner from magistrate's sentence.....	217
papers transmitted by justice in case of.....	218
by defendant to supreme court.....	220
does not vacate judgment.....	224
in forma pauperis.....	221
by the State in what cases.....	219
from justice's judgment.....	80 to 86
when and how taken in justice's court.....	82
does not stay execution.....	81
justice's return to notice of.....	84, 85
stays execution in criminal case.....	224
costs in case of.....	221

(See also Index to Forms.)

(References are to sections.)

Appeal (continued).	Section
Generally (continued).	
stay of execution on.....	224
costs to be secured on.....	221
costs on	221, 1956 to 1959
notice of, from justice.....	83
return to notice of, by justice.....	84
bail allowed defendant upon.....	222, 223
after decision by supreme court of, procedure.....	226
to the supreme court.....	1071
writs of error abolished [page 829].....	3407
certiorari, recordari and supersedeas [page 829].....	3408
who may appeal [page 829].....	3409
in what cases taken [page 829].....	3410
from judge in special proceeding [page 829].....	3411
interlocutory orders reviewed on appeal from judgment [page 829].....	3412
To the Supreme Court.	
when taken [page 829].....	3141
execution stayed, when [page 829].....	3413
entered on docket [page 829].....	3414
case on appeal, how stated and settled [page 829].....	3414
clerk to prepare transcript [page 830].....	3415
undertaking on appeal; filed in supreme court, when [page 830]	3416
justification of sureties [page 831].....	3417
undertaking to be filed with clerk [page 831].....	3418
notice of motion to dismiss for irregularities [page 831]...	3419
appeals in forma pauperis [page 831].....	3420
undertaking to stay proceedings, money demand; perishable property sold [page 832].....	3421
property deposited in court to stay proceedings; when [page 832].....	3422
conveyances executed to stay proceedings, when [page 832]	3423
proceedings stayed in possessory action and foreclosure, how [page 833].....	3424
extent of stay; security limited for fiduciaries [page 833]..	3425
undertaking in one instrument or several [page 833].....	3426
undertaking served on appellee [page 833].....	3426
judgment not vacated by stay of proceedings [page 833]...	3427
judgment on appeal and on undertakings [page 833].....	3428
restitution [page 833].....	3428
From justices of the peace.	
plaintiff's cost bond on appeal from justice [page 833]....	3429
appeal from justice heard de novo [page 834].....	3430
judgment by default of defendant [page 834].....	3430
appeal dismissed [page 834].....	3430
clerk to docket appeal from justice for trial de novo [page 834]	3431
appeal from justice heard on original papers [page 834]...	3432
From the clerk of the superior court.	
appeal from clerk [page 834].....	3433
when taken; who may take [page 834].....	3434
duty of clerk on appeal prayed [page 834].....	3435
duty of judge on appeal from clerk [page 834].....	3436
judge determines entire controversy on appeal from clerk; may recommit [page 835].....	3437
from clerk to judge [page 835].....	3438

(See also Index to Forms.)

(References are to sections.)

	Section
Appearance, voluntary, equivalent to service.....	937
Appraisers, malfeasance of.....	540, 541
Apprentices.....	1510 to 1532
Arbitrators, power to subpoena witnesses.....	2212
Arguments of counsel, limits upon.....	1543
Arrest. See "Arrest and Bail."	
to be made by persons present at breach of peace.....	114
to be made by officers without warrant, when.....	116
by persons in whose presence felony is committed.....	115
of fugitives.....	122 to 128
witness attending court exempt from.....	2207
jurors exempt from.....	2548
generally	114 to 121
may be made by passenger train conductors and depot agents	121
Arrest and Bail, allowed in what cases.....	1182, 1183
order, by whom made.....	1184
affidavit to obtain order.....	1185
code of civil procedure applicable in justice's court.....	66
undertaking required before issuing order.....	1186
order time of issuance and form of.....	1187
sheriff to have order and affidavit and to serve with copy..	1188
order, how executed.....	1189
defendant discharged, how.....	1193
undertaking of defendant.....	1194
surrender of defendant by bail.....	1208
arrest of defendant by bail.....	1209
bail to be proceeded against by motion.....	1210
bail, how exonerated.....	1207
undertaking of bail to be delivered to clerk.....	1195
notice of justification; new bail.....	1197
qualifications of bail.....	1196
justification of bail.....	1198
adjudication that bail is sufficient.....	1199
deposit in lieu of bail.....	1200
deposit to be paid into court.....	1201
bail substituted for deposit.....	1202
deposit applied to plaintiff's judgment.....	1203
sheriff liable as bail, when.....	1205
action on sheriff's bond.....	1206
bail liable to sheriff.....	1211
vacated unless served before judgment.....	1190
motion by defendant to vacate order of arrest.....	1191
motion may be opposed by plaintiff, when.....	1192
defendant confined may give bail.....	1204
bail to pay costs, when.....	1212
bail not discharged by amendment of process.....	1213
Arson	278
Assault, punishment for.....	575
in one county, death in another.....	175
in this state, death in another.....	176
person charged with higher offense may be guilty of.....	211
pointing gun or pistol at person.....	577
secret	576
with intent to commit rape.....	593

(See also Index to Forms.)

(References are to sections.)

Assignment, Fraudulent.	See "Conveyances."	Section
Attachment,	Code of civil procedure applicable in justice's court..	65
	in what actions, may issue.....	1214
	at what time warrant may issue.....	1218
	what shown to procure warrant.....	1215
	publication of justice's warrant.....	1222, 1226
	warrant, by whom granted	1217
	warrant, how served.....	1223, 1222
	when justice may grant warrant.....	1225
	justice's, levied on land.....	1227
	affidavit filed	1216
	undertaking required	1219
	warrant, requisites of.....	1221
	validity of undertaking.....	1220
	notice of, how served.....	1222
	warrant, how executed.....	1223
	proceedings when property perishable.....	1228
	defendant may replevy.....	1229
	interest in corporations, etc., liable to.....	1232 to 1234
	property incapable of manual delivery.....	1233
	garnishee summoned; answer of; judgment against.....	1235
	garnishee failing to appear.....	1236
	garnishee denying he has property.....	1237
	garnishee admitting property; valuation by jury.....	1238
	garnishee; conditional judgment against for money to be- come due	1239
	certificate of defendant's interest furnished.....	1234
	judgment, how satisfied.....	1240
	actions prosecuted by plaintiff instead of sheriff.....	1241
	bond of plaintiff, etc., how disposed of.....	1242
	attachment discharged when.....	1230
	undertaking given by defendant.....	1231
	property claimed by third party.....	1245
	return of warrant, when.....	1224
	motion to vacate or modify warrant.....	1243
	motion to increase security.....	1243
	exception to and justification of sureties.....	1244
Attempt,	conviction for.....	212
Attorney,	how licensed.....	1533, 1534
	to take oath.....	1535
	persons disqualified to act as.....	1536, 596
	debarred	1537 to 1539
	authority filed or produced if requested.....	1540
	liable for costs incurred by failure to file complaint.....	1541
	fraud by, renders liable for double damages.....	1542
	argument of, controlled by court.....	1543
	authority from non-resident petitioners filed in ex parte matters	1175
	persons disqualified.	1536
	not allowed to practice when a magistrate or county com- missioner	596
	clerk superior court not to act as.....	596, 1536
	power of, recorded.....	1735
	power of, from husband and wife, to convey land.....	1704
Auctioneers,	how appointed.....	1544
	duties	1545
	semi-annual accounts	1546

(See also Index to Forms.)

(References are to sections.)

Auctioneers (continued).	Section
penalty for acting without appointment.....	1546
to sales of what articles applicable.....	1547
commissions; pay one per cent to town.....	1548
Automobiles regulated.....	761, 762
Bail , when granted.....	147
certificate of granting.....	152
allowed, when	147
allowed, by whom.....	148 to 150
bond to be filed with the clerk.....	151
mortgage given in lieu of bond.....	1562 to 1568
allowed by magistrate on continuance.....	153
bondsmen may arrest principal.....	166
duty of magistrate who grants.....	152
forfeited, procedure	154 to 169
substitute, allowed to surrender principal.....	166
sheriff may take.....	148
may plead any defense principal might.....	169
allowed in case of appeal.....	223
in civil cases.....	1182 to 1213
Balances. See "Weights and Measures."	
Bankrupt , acknowledgement by, to be in writing.....	860, 1726
Banks. See "Crimes."	
Bar-room , unlawful for minor to enter, when.....	476a, 684
Bastardy , justices have jurisdiction.....	1549
warrant issued only on complaint of woman or county commissioner	1549
procedure on complaint by county commissioner.....	1550
procedure when woman declares father.....	1551
procedure on appeal.....	1552
putative father out of county.....	1553
upon appeal parties and witnesses recognized.....	1554
case may be continued till birth of child.....	1555
fine, allowance and bond.....	1556
action barred in three years after birth.....	1557
execution may issue for maintenance.....	1558
putative father, when committed or apprenticed.....	1559
procedure for legitimating bastards.....	1560
effects of legitimation.....	1561
Bawdy-houses	291, 291a
Betterments	1109 to 1123
Betting. See "Gambling."	
Bigamy	305
Bill of Particulars , as to indictment.....	184
Billiard-room , unlawful for minor to enter, when.....	476a, 684
Bills and Notes. See "Negotiable Instruments."	
reasonable time, determined how.....	2913
Sunday, holidays; when date falls on.....	2804
authorization to confess judgment invalid.....	2916
waiver of homestead or exemptions invalid.....	2916
provision to pay counsel fees invalid.....	2916
days of grace.....	2804, 2805
interest, when to accrue.....	2521
payable on demand, interest from when.....	2521

(See also Index to Forms.)

(References are to sections.)

Bills and Notes (continued).	Section
for specific articles, to bear interest.....	2521
interest on bills of exchange.....	2521
bonds payable to clerks, etc., sued on in name of State....	1577
Birds. See "Game" and "Hunting."	
Blackmailing	374
Boarding-house keepers. See "Inn-keepers."	
lien of.....	2605 to 2607
Boats removal of.....	499
obstruction of passage of.....	516
Boilers, tampering with	622
Bond, payable to clerk, etc., sued on in name of State	1577
mortgage in lieu of.....	1562 to 1568
See "Bail."	
Bond for costs. See "Undertaking," "Costs," "Appeal."	
appeal without giving.....	221
required before summons issues.....	940 to 942
required of defendant in action for real property.....	943, 944
mortgage in lieu of.....	1566
not required in divorce case.....	2122
Bonds.	
Mortgage in lieu of.	
fiduciary or official.....	1562
appearance; security for costs or fine.....	1563
how cancelled; effect.....	1564
clerk superior court; depository of.....	1565
prosecution	1566
affidavit of value of property required.....	1567
additional security required, when.....	1568
In surety companies.	
by state officers.....	1569
municipal officers; fiduciaries; litigants, etc.....	1570
how released from liability.....	1571
estoppel to plead ultra vires; penalty failure to pay judgment	1572
when accepted and officer inducted.....	1573
expense of fiduciary bond charged to fund.....	1574
Officer acting without.	
penalty for	1575
Irregularity.	
informal taking, not to invalidate.....	1576
Actions on.	
taken in judicial proceedings brought in name of State....	1577
official bonds, relator; successive suits.....	1578
complaint must show party in interest; may sue officer individually	1579
summary remedy on official bond.....	1580
damages against officers for money unlawfully detained..	1581
evidence against principal admissible against sureties....	1582
officer liable for debt, when.....	1583
County officers.	
clerk of superior court.....	1584
clerk's bond how approved; where deposited.....	1585
county treasurer; penalty; when renewed.....	1586
sheriff; number; penalty; form.....	1587
coroner; penalty; oath of office.....	1588

(See also Index to Forms.)

(References are to sections.)

Bonds (continued).	Section
County officers (continued).	
coroner's bond registered.....	1589
register of deeds.....	1590
constable, where registered; fees, how paid.....	1591
county surveyor	1592
entry taker	1593
wreck commissioner	1594
standard-keeper	1595
Pilots.	
pilot; may be enlarged; where filed.....	1596
Duty of county commissioners.	
county officials' bonds; term of; examined annually; in- creased when	1597
vacancy declared on failure to renew bond.....	1598
justification of surety on official.....	1599
county commissioners to approve bonds; custody; how acknowledged	1600
clerk of board to record yeas and nays on approval; penalty for failure	1601
commissioner liable as surety, when.....	1602
record of board as conclusive evidence of facts stated therein on prosecution	1603
commissioners can not be sureties where they may ap- prove	1604
Duty superior court judge.	
official bond insufficient, new one required; office vacated for failure; successor appointed ..?	1605
appointed to give bond; official bonds, liabilities.....	1606
Judge to file statement of proceedings with commissioners,	1607
Fiduciaries.	
executors, administrators or collectors; penalty; condition,	1608
public administrator	1609
public guardian	1610
public guardian's bond enlarged.....	1611
guardian to give bond; condition.....	1612
guardian to renew bond every three years.....	1613
Book accounts	2185 to 2187
Books, sale of obscene	686
production of. See "Subpoena duces tecum" and "Writ- ings."	
Boundaries.	
may be established by special proceeding.....	1614
procedure for establishing	1615
Bowling-alley, unlawful for minors to enter, when.....	684
Brakeman, intoxication of, a misdemeanor.....	722
Bribery, of elector	332
of officers	523, 524
of legislator	525
of witness	652
of juror	652
Bridges. See "Roads."	
injuring	739
owners of mills failing to keep up.....	740
railroads to keep up.....	743
failure to maintain.....	741
vessels not to be fastened to.....	742
fast driving over	748

(See also Index to Forms.)

(References are to sections.)

	Section
Bucket-shops, prohibited	792 to 795
Buggery, offense complete on penetration	594
Building and loan associations. See "Crimes."	
Buoys, unlawful to anchor vessels to	501
vessels to pass, carefully	500
Burglary	213
Burning woods	278 to 290
Burnt and lost records.	
certified copies of destroyed records received in evidence.	1616
original papers may be again recorded; survey may be	
made by petition before clerk.....	1617
copies of lost wills may be admitted to probate.....	1618
certified copy of will evidence; letters testamentary	
granted	1619
contents of destroyed will proved on petition before clerk,	1620
destroyed judgments and proceedings perpetuated by peti-	
tion in court having original jurisdiction.....	1621
color of title, how determined.....	1622
action on destroyed official bonds.....	1623
witness tickets destroyed, others filed.....	1624
lost conveyances, how replaced.....	1625
records of courts admissible to prove contents of deeds,	
wills, etc.	1626
copies of deeds, etc., mentioned in preceding section may	
be registered	1627
rules for petitions under this chapter.....	1628
records allowed under this chapter have same effect as	
original	1629
recitals of decrees, records, etc., in deeds executed prior	
to destruction thereof prima facie evidence of existence,	1630
deed prima facie evidence of records recited therein.....	1631
provisions of this chapter extend to what records, etc....	1632
certain records in Moore County presumed to have been	
burned	1633
In Buncombe, Madison, Yancey and Haywood counties....	1634
Bushel. See "Weights and Measures."	
Business, order of, for courts	1021
Butter, sale of, regulated	798
Camp fires, not extinguishing	240
Canals.	
obstructing	320
injuring	717
making without authority.....	732
Cancellation of mortgages, etc.	1796
Capital offenders, execution of	227 to 229
Case agreed	1295 to 1297
Castration	581, 582
Cattle. See "Cruelty to Animals." See "Crimes," subdivisions	
"Animals" and "Cattle."	
altering brand or driving from range, etc.....	252, 260
driving from range to secure poundage, etc.....	252
impounded	252 to 255
injuring or pursuing, larceny.....	456
guards to be constructed and maintained on railroads....	715

(See also Index to Forms.)

(References are to sections.)

Cattle (continued).	Section
killing stock in woods.....	258
stone horses and mules not to run at large.....	266
killed by railroad, presumption of negligence.....	3041
Challenges , to jurors in criminal cases.....	205 to 207
to jurors in civil cases.....	2533, 2534
to fight a duel.....	583
to jurors in magistrate's court.....	21
Chattel mortgage. See "Conveyances."	
form of certain.....	1790
when privy examination of wife required.....	1791
registration of.....	1790a
notice of sale under.....	1790a, 1792
Children. See "Minors," "Infants," "Adoption of Minor Children," "Crimes."	
abandonment of, a crime.....	299 to 301
abandonment of, forfeits right to custody of.....	1506
abduction of.....	302, 303
abduction of, by parents.....	318
carelessly exposing to fire.....	764
employment of, in factories.....	306 to 309
concealing birth of.....	578
kidnapping.....	589
enticing away and detaining.....	589
enticing, to leave the state.....	585
rape of.....	592
heirs of living person construed to be.....	2146
disposition of, in case of divorce.....	2133a, 2267
restoration to parents after forfeiture of right.....	1507
age of consent.....	292
Cities. See "Towns."	
Claim and delivery.	
code of civil procedure applicable to justice's court.....	66
delivery claimed, when.....	1246
affidavit; requisites.....	1247
when magistrate has jurisdiction.....	1247 (notes)
fiat to sheriff to deliver property.....	1248
undertaking of plaintiff.....	1249
exceptions to undertaking.....	1250
undertaking of defendant.....	1251
justification of defendant's sureties.....	1252
qualifications of sureties.....	1253
concealed property, how taken.....	1254
property taken, how kept.....	1255
property claimed by third person.....	1256
property delivered to claimant.....	1257
return of undertaking, etc., by sheriff.....	1258
Clerk of the superior court.	
General provisions.	
docket of justice, to be filed with.....	12
forbidden to practice law.....	596, 1536
meant by word "Court".....	841
jurisdiction of, on pleadings.....	847
bond of.....	1584, 1585
bond, how approved.....	1585
failure to give bond.....	520, 1575
acting without giving bond.....	520
required to keep fee bill publicly posted.....	Revisal 2774

(See also Index to Forms.)

(References are to sections.)

Clerk of the superior court (continued).	Section
General provision (continued).	
issues joined before, matter transferred.....	1017
mortgage in lieu of bond.....	1565
punishment of, on conviction of infamous crime.....	1640
to take affidavits	1671
of court of record another state is commissioner of affi- davits and deeds	1677
deputy may take probates.....	1647
liable for act of deputy.....	1646
record of appointment of deputy	1645
certificate to justice's certificate on probate.....	1740
order for registration by clerk or deputy.....	1747
when clerk interested in deed, how probated.....	1743 and 1747
to appoint trustees	1787
to issue subpoenas	2202 to 2205
to receive and deliver instruments to register.....	3054
to certify magistrate's process.....	41
includes judge of probate, which is abolished.....	1635
how elected; term of office.....	1636
how inducted into	1637
when declared vacant	1638
may be resigned	1639
when removed from	1640
how vacancies filled	1641
how furnished with stationery, etc.....	1642
examined by solicitor	1643
Deputies.	
may be appointed	1644
record of appointment and discharge.....	1645
clerk responsible for acts of.....	1646
Powers.	
enumeration of	1647
when he can not exercise.....	1648
exercise of, on waiver of disqualification.....	1649
when can not exercise, cause removed.....	1650
exercised by judge, when.....	1651
Duties.	
to receive official papers from predecessor.....	1652
to transfer records to successor, how compelled.....	1653
unperformed duties of outgoing clerk, how compelled....	1654
when and where to keep office open.....	1655
how leave of absence from office obtained.....	1656
to furnish blank process, bonds and undertakings.....	1657
how papers must be filed.....	1658
to keep record; liable for records and papers.....	1659
to endorse date of issue on process.....	1660
books to be kept.....	1661
Reports.	
list of justices to secretary of state.....	1662
criminal statistics to attorney-general.....	1663
Money in hands of.	
of funds in hands of county commissioners.....	1664
how approved, recorded and published.....	1665
compelled by commissioners	1666
paid to persons entitled.....	1667
fees of jurors and witnesses, when paid to treasurer.....	1668
used by public till called for.....	1669
paid indigent children, when.....	1670

(See also Index to Forms.)

(References are to sections.)

	Section
Code of civil procedure , applicable to magistrate's court.....	64
provisions of.....	835 to 1325
Commissioners , not to be contractors.....	527
returns of	1179
power to subpoena witnesses.....	2212
reports of filed when.....	1179
reports of confirmed when.....	1179
reports of not set aside for trivial defects.....	1180
required to settle within sixty days.....	1181
Commissioners of Affidavits	1671 to 1677
Commissioners, County. See "County Commissioners."	
Commitment , to show what, when defendant bound over.....	170
where	171
what final, shall set forth.....	201
to what jail.....	171
of witnesses	172
Common Law , in force now.....	1678
Complaint , in magistrate's court.....	48, 50
in superior court, when filed.....	955, 956
what to contain.....	957
in action for purchase-money of land.....	958
in special proceedings.....	1170
what causes of action may be joined in.....	959
Compromise , offer of.....	1290 to 1294
Concealed weapons , carrying.....	663
Conditional sale , to be registered.....	1731, 1732
Conductor , intoxication of a railroad, a misdemeanor.....	722
Confession , of judgment without action.....	1068 to 1070
Consent , age of.....	292
Constables. See "Sheriffs."	
how elected	1679
oath of office.....	1680
duty of	1683
to execute notices and process.....	1684
special	1681
vacancies filled by county commissioners.....	1682
bond of, to be registered.....	1591
liable for whole debt when not diligent in collecting....	1583
of town	1685
Constitution , abrogation of certain provisions.....	3
Contempt , what constitutes.....	1686
punishment for	1687
who may punish.....	1689
when offended to appear and show cause.....	1690
profanity before a magistrate.....	Revisal 1426
court may punish summarily.....	1688
what constitutes offense punished as for contempt.....	1691
proceedings as for contempt, how prosecuted.....	1692
Continuance , of term of court expiring during trial.....	209
may be granted by a magistrate.....	63
of action before trial term.....	1018
of action at trial term.....	1019
counter-affidavits allowed upon motion for in civil case....	1020

(See also Index to Forms.)

(References are to sections.)

Section

Contracts. See "Conveyances."

Controversy without action...... 1295 to 1297

Conversion of personal property, damages for...... 67

Conveyances.

Construction.

construed to be in fee, when..... 1693

attornment unnecessary, conveyance of reversions, etc.... 1694

vagueness of description..... 1695

conveyances to slaves..... 1696

Officer not in office.

executed by ex-officer, when..... 1697

executed by successor, when..... 1698

By husband and wife.

of wife's land; how proven..... 1699

acknowledgement by, at different times and places; before
different officers 1700

husband's deed registered though no private examination
of wife 1701

what officers can take private examinations of femes
covert. 1702

private examination procured by fraud, deed good as to
innocent purchaser for value..... 1703

under power of attorney from..... 1704

wife need not join in purchase money mortgage..... 1705

by husband, wife a lunatic..... 1706

Fraudulent.

void as to creditors..... 1707

when void as to purchasers..... 1708

gifts, indebtedness evidence of fraud..... 1909

sales of stock of merchandise in bulk..... 1710

marriage settlements, as to existing creditors..... 1711

bona fide conveyances to innocent purchaser for value,
valid 1712

innocent purchaser for value protected against illegal con-
sideration 1713

purchasers entitled to remedy of creditors..... 1714

Assignment for creditors.

debts mature on execution of; schedule of preferred debts
filed 1715

inventories filed within ten days..... 1716

insolvent trustee without bond removed by clerk..... 1717

substituted trustee to give bond..... 1718

only perishable property sold within ten days from regis-
tration 1719

creditors to file verified statements with trustee..... 1720

trustee to file quarterly accounts; close trust in twelve
months 1721

Contracts to be written.

charging executor personally, or one with debt of another 1722

with Indians 1723

for sale or lease of land..... 1724

sales of liquors on credit..... 1725

promise to revive debt of bankrupt..... 1726

Registration required.

probate and registration supplies livery of seizing..... 1727

conveyances, contracts to convey, and leases of land..... 1728

deeds executed prior to January first, one thousand, eight
hundred and seventy..... 1729

(See also Index to Forms.)

(References are to sections.)

Conveyances (continued).	Section
Registration required (continued).	
mortgages and deeds of trust.....	1730
conditional sales of personal property.....	1731
conditional sales of railroad property.....	1732
marriage settlements	1733
deeds of gift.....	1734
powers of attorney.....	1735
certified copies may be registered; used as evidence.....	1736
Probate.	
before what officers.....	1737
before what non-resident officers.....	1738
by commissioner appointed by clerk, maker non-resident..	1739
before justice of county other than where land lies; clerk's certificate	1740
seal of probating officer, when.....	1741
taken anywhere	1742
when clerk is a party.....	1743
subscribing witness, or maker subpoenaed, when.....	1744
proof of witness's handwriting, when.....	1745
proof of maker's handwriting, when.....	1746
clerk or deputy must pass on certificate of other officer....	1747
of deed by husband whose wife is insane.....	1748
Forms.	
adjudication and order of registration.....	1749
acknowledgement by grantor.....	1750
private examination of wife.....	1751
private examination and acknowledgement by husband....	1752
corporate conveyances	1753
clerk's certificate upon probate by justice of the peace....	1754
clerk's certificate upon probate by non-resident officer without seal	1755
Probates validated.	
errors in registration corrected.....	1756
taken by judges supreme or superior court, or deputy clerks	1757
defective order of registration.....	1758
where registered on order of judge, clerk being party.....	1759
notary having certified under his private seal.....	1760
before officer of state other than that of grantor.....	1761
where secretary of state instead of governor has certified to officer	1762
where clerks interested.....	1763
where officer interested in grantee corporation.....	1764
where "previously" has been used instead of "privately"...	1765
probate in wrong county; by wife before husband.....	1766
acknowledgements before different officers.....	1767
acknowledgement by resident beyond the state.....	1768
by clerks of criminal courts in Buncombe county.....	1769
by clerks of inferior courts.....	1770
before notary or clerk of court of record of another state..	1771
evidence under preceding section.....	1772
taken before vice-consul or vice-consul general.....	1773
under form previously legal.....	1774
proof of handwriting of grantor refusing to acknowledge..	1775
proof of corporate articles of agreement.....	1776
execution and proof of corporate deeds.....	1777
by de facto officers in Greene.....	1778

(See also Index to Forms.)

(References are to sections.)

Conveyances (continued).	Section
Probates validated (continued).	
by clerks of wrong county.....	1779
where certificate of justice of the peace is not proven.....	1780
Trustees.	
trustee or mortgagee dead, personal representative executes power	1781
foreclosures by representative of deceased mortgagees, validated	1782
surviving mortgagee executes power.....	1783
when succeeding guardian executes power.....	1784
power executed by agent, appointed orally or by writing..	1785
infant trustees convey, how.....	1786
when clerk appoints a new trustee.....	1787
executor of mortgagee may renounce; trustee appointed by clerk	1788
sales by trustees of benevolent orders.....	1789
Chattel mortgage.	
form of	1790
registration of, notice of sale under.....	1790a
mortgages of household and kitchen furniture.....	1791
Mortgage sales.	
advertised at court-house door.....	1792
description of property in advertisements.....	1793
power of sale barred when.....	1794
Revocation and discharge.	
deeds to persons not in esse revoked.....	1795
mortgages and deeds of trust released, how.....	1796
Certain deeds validated.	
by sheriffs or commissioners without seals.....	1797
Convicts, female, not worked on road.....	551
others worked on roads.....	2033 to 2037
Copy of warrant, etc., to be furnished by justice.....	202
of bill of costs to be furnished by justice.....	543
service of summons by delivering.....	930
of paper lost or withheld may be used.....	1616 to 1634
See also.....	2166, 2170 to 2182
Coroner to hold inquests.....	1802
to act in sheriff's place, when.....	1803
compensation of jurors of inquest.....	1804
jurors to prove attendance and mileage before.....	1804
bond of	1588, 1589
oath of	1799
bond to be registered.....	1589
special	1800, 1801
vacancy filled by clerk.....	1800
liable for whole debt when not diligent in collecting.....	1583
how elected	1798
clerk appoints for special cases.....	1798
Corporations.	
actions against, where tried.....	912, 913
General powers.	
corporate powers	1805
implied powers; how far this chapter affects all corporations	1806
how land conveyed; certain conveyances void as to torts..	1807
mortgaged corporate property subject to execution for labor and torts.....	1808

(See also Index to Forms.)

(References are to sections.)

Corporations (continued).	Section
General powers (continued).	
gas companies may supply electricity.....	1809
special powers of gas and electric companies.....	1810
corporations created hereunder can not do banking business	1811
Legislative control.	
legislative power over corporate charters.....	1812
this chapter may be amended; corporations bound thereby; appropriate portions a part of all charters.....	1813
Formation.	
how created	1814
street railways may be incorporated hereunder.....	1815
certificate of incorporation, how signed, proved, filed and recorded	1816
when incorporators become a corporation.....	1817
incorporators to direct affairs until directors are elected..	1818
first meeting, how called.....	1819
death of incorporators; vacancy filled.....	1820
errors in certificates of incorporation, how corrected.....	1821
By-Laws.	
power to make and alter	1822
what they may determine and contain.....	1823
Officers.	
directors, their selection, powers, duties, terms of office, classes, etc.	1824
directors must be stockholders.....	1825
officers, their selection, qualifications, duties, terms, etc..	1826
other officers, agents, and factors.....	1827
vacancies, how filled.....	1828
annual statement; forfeiture for failure to make; duty of secretary of state and attorney-general.....	1829
secretary of state may call for special reports.....	1830
liability for making false certificates.....	1831
fraud; liability of officers, directors and stockholders for..	1832
who may sue officers and directors personally.....	1833
action by officer for money advanced.....	1834
assets of corporation first exhausted.....	1835
Capital stock.	
classes of stock; issued for property or labor.....	1836
capital stock, how paid; loans to stockholders.....	1837
stock issued full paid for property purchased; statements to contain the facts.....	1838
stockholders' liability for stock not fully paid, fiduciaries and pledges	1839
liability of officers failing to make certificates.....	1840
decrease of capital stock, how effected; liability of direct- ors and stockholders.....	1841
certificates of stock.....	1842
duplicate certificates issued by directors.....	1843
action to compel issuance of duplicate certificate.....	1844
shares, personal property; how transferred; held as col- lateral	1845
assessments upon shares.....	1846
shares sold to pay assessments.....	1847
notice of sale.....	1848
certain construction companies may take stock and bonds for labor, materials, etc.; statements to contain the facts	1849
one corporation may hold stock and securities for another.	1850

(See also Index to Forms.)

(References are to sections.)

Corporations (continued).	Section
Amendments, surrender and extension.	
amendments before payment of stock.....	1851
amendments, generally	1852
change of location of principal office.....	1853
surrender of corporate rights before payment of stock....	1854
extension of corporate existence.....	1855
Corporate meetings.	
place of meetings; books at principal office; jurisdiction	
superior court over books.....	1856
transfer and stock books at principal office; only evidence	
as to stockholders, when; directors' duties.....	1857
transfer book determines right to vote.....	1858
directors, how elected; quorum for.....	1859
votes stockholders entitled to; cumulative voting.....	1860
votes stockholders entitled in absence of special provision;	
proxies; transfers within twenty days of election.....	1861
stock held by fiduciaries, pledges and married women....	1862
stock held by life tenant.....	1863
shares belonging to corporation.....	1864
failure to hold election, effect; judge may order.....	1865
jurisdiction of superior court over elections.....	1866
meetings called by three stockholders, when.....	1867
Dividends.	
when declared; working capital.....	1868
from profits and surplus only; liability of directors; lim-	
itations of actions.....	1869
Foreign corporations.	
may do business here.....	1870
to file charters and statement with secretary of state; fees	
therefor; forfeiture	1871
Dissolution.	
voluntary	1872
involuntary, at instance of private persons.....	1873
attorney-general may sue to restrain ultra vires acts; to	
compel accounts; to remove officers; to preserve pro-	
perty	1874
involuntary at instance of attorney-general.....	1875
service of summons in actions for.....	1876
corporate existence continued three years for winding up.	1877
upon dissolution, directors to be trustees; powers and du-	
ties; debts not extinguished.....	1878
directors as trustees may sue and be sued.....	1879
jurisdiction of superior court; may appoint directors or	
others as receivers; powers and duties.....	1880
jurisdiction of judge.....	1881
injunction; when notice and undertaking required.....	1882
wages for two months lien on assets.....	1883
distribution of funds.....	1884
dissolution does not abate actions; receivers to be notified.	1885
judgment of forfeiture against a corporation.....	1886
persons claiming to be corporation liable for costs of ac-	
tion.....	1887
clerk superior court to file copy of judgment dissolving	
corporation with secretary of state; costs thereof....	1888
Execution.	
how issued and on what levied.....	1889
agent must furnish information as to property to officer	
with	1890

(See also Index to Forms.)

(References are to sections.)

Corporations (continued).	Section
Execution (continued).	
shares of stock sold under.....	1891
officer entitled to information as to stock.....	1892
against debts due corporations; liability of agents refusing compliance	1893
proceedings when custodian of corporate books is a non-resident	1894
duty and liability of non-resident custodian of corporate books	1895
Receivers.	
when appointed	1896
debts provided for, receiver discharged.....	1897
reorganization after receiver discharged.....	1898
powers and bond.....	1899
majority may act; removal of; vacancies.....	1900
property to vest in.....	1901
inventory	1902
compensation	1903
may send for persons and papers; penalty for refusing to answer	1904
time limit for creditors to present claims.....	1905
claims, how presented and proved; power and duty of receiver	1906
claims reported to court; exceptions in ten days; right to jury trial	1907
may become plaintiff in pending action.....	1908
property sold pending litigation; fund reserved.....	1909
Taxes and fees.	
state taxes; organization, amendments, dissolution, etc....	1910
fees to secretary of state and clerk of superior court.....	1911
tax on bills creating private corporations; copy to be filed with secretary of state before organization.....	1912
corporate property liable for taxes, though in receiver's hands	1913
tax collector need not obtain order of court though property is in receiver's hands.....	1914
Reorganization.	
corporations whose property and franchises sold under order of court or execution.....	1915
new corporators to meet and organize.....	1916
duties and powers of meeting.....	1917
certificate to be filed with the secretary of state.....	1918
Miscellaneous provisions.	
name of corporation to be displayed.....	1919
resident process agent required; in absence, service upon secretary of state sufficient; fees.....	1920
secretary of state to annually publish list of corporations created	1921
mutual corporations may create stock.....	1922
forfeiture by failure for two years to organize; or after organization to act; duty of secretary of state and attorney general	1923
meaning of "judge," "court," etc.....	1924
amendments to certain charters validated.....	1925
process served on foreign.....	39
Correction, houses of, for youthful offenders.....	216 a
Costs. See "Bond for Costs," and "Official Fee Bill".....	page 810
appeal without bond for.....	221

(See also Index to Forms.)

(References are to sections.)

Costs (continued).	Section
itemized statement of, to be furnished by justice.....	543
undertaking for, before summons.....	940
giving surety for, does not discharge judgment.....	1970
expense of survey, charged as.....	2093
no bond for, required in divorce case.....	2122
Generally.	
what allowed	1926
summary judgment for uncollected.....	1927
judgment and execution for, against sureties on prosecution or appeal bond.....	1928
executions for, when issued; irregular if not itemized.....	1929
juror's tax fees.....	1930
criminal, not demandable in advance.....	1931
clerk to insert, in entry of judgment.....	1932
bills of criminal costs itemized; approved by solicitor....	1933
justices required to itemize bills of.....	1934
bills of, open to the public.....	1935
State, liable, when.	
civil actions by the state.....	1936
civil actions by and against state officers.....	1937
civil actions by state for individuals.....	1938
in bribery prosecutions.....	1939
on appeal by state to supreme court of United States....	1940
Civil actions and proceedings.	
when allowed plaintiff; when limited by amount of recovery	1941
when allowed pauper plaintiff.....	1942
when allowed defendant.....	1943
discretionary in other actions.....	1944
when in discretion of the court.....	1945
petitioner pays, when.....	1946
defendant pays, unreasonably defending action after notice, no person claim.....	1947
no person claim.....	1947
none allowed to party suing on usurious contract.....	1948
in special proceedings.....	1949
allowed in supplemental proceedings.....	1950
laying off homestead and exemptions.....	1951
on re-assessment of homestead.....	1952
against infant plaintiff, guardian responsible.....	1953
actions by or against executors, trustees or persons authorized by statute.....	1954
assignee after action brought, liable for.....	1955
On appeals (see section 3420, page 831).	
generally	1956
of transcript on appeal taxed in supreme court.....	1957
from justices of the peace.....	1958
not allowed plaintiff unless his recovery is greater than before justice	1959
Liability of counties in criminal actions.	
county pays, when.....	1960
county liable in supreme court, when.....	1961
county where offense committed to pay costs; if not paid prisoner returned	1962
statement of, chargeable to county, filed with commissioners	1963
expense incurred in going after prisoner, how paid.....	1964

(See also Index to Forms.)

(References are to sections.)

Costs (continued).	Section
Liability of counties in criminal actions. (continued).	
lynchings, costs of investigation.....	1965
when county pays state's witnesses.....	1966
when county pays defendant's witnesses.....	1967.
Liability of defendant in criminal actions.	
when defendant pays.....	1968
defendant imprisoned, detained until cost paid.....	1969
confession of judgment to secure fine and costs.....	1970
defendant failing to pay, may be arrested.....	1971
The prosecutor.	
who is prosecutor; when pays costs.....	1972
pay of witnesses in criminal cases.....	1973
when imprisoned for.....	1974
Witnesses.	
not entitled to, in advance.....	1975
must prove attendance; may recover therefor.....	1976
tickets filed with clerk; only two to prove same fact.....	1977
pay of, before jury of view or commissioner.....	1978
when witness before grand jury.....	1979
state's paid, when; only two paid; one attendance, one day.....	1980
only two bound over on appeal in criminal action.....	1981
how discharged; certificate of attendance filed.....	1982
not paid unless certified; discretion of judge.....	1983
Criminal costs before justices.	
who pays in justice's court.....	1984
defendant imprisoned for.....	1985
Cotton , sale and purchase of regulated.....	782
weighing of, regulated.....	785
weigher's oath, etc.....	784
Cotton seed meal , sale of, regulated.....	783
Counsel , to be allowed prisoner.....	91, 131, 132
argument of, may be limited.....	1543
See "Attorneys."	
Counter-claim	969, 971
Counterfeit , stock of corporation.....	367
coin	368
tools with which to.....	369
trade-marks.....	822
brands	822, 821, 823
County . See "County Commissioners," "County Revenue," etc.	
claims against, when barred.....	886
claims against, must be presented.....	886, 2062
County claims , speculating in.....	530
County Commissioners .	
body politic; powers exercised by commissioners.....	1986
corporate powers	1987
Election of.	
by qualified voters; number.....	1988
by justices of the peace.....	1989
meetings of justices of the peace in certain counties.....	1990
vacancies in board; how filled.....	1991
vacancies in board to qualify; oath to be filed.....	1993
Meetings.	
meetings of the board.....	1994

(See also Index to Forms.)

(References are to sections.)

County Commissioners (continued).	Section
Powers and duties.	
powers given board.....	1995
powers in certain counties.....	1996
purchase of county indebtedness.....	1997
to fill vacancies in certain offices.....	1998
to furnish dockets to justices.....	11
to settle disputed county lines.....	1999
such commissioners, how sworn and paid.....	2000
Clerk to board.	
register of deeds ex-officio; compensation.....	2001
duties.....	2002
to publish annual statement.....	2003
County poor.	
county commissioners to provide for support of; superintendent.....	2004
county home for aged and infirm.....	2006
indigent persons owning property.....	2007
families of militiamen supported by county.....	2008
paupers not to be hired out by auction.....	2009
legal settlements, how acquired.....	2010
removal to proper county, at cost of that county; house-keepers entertaining poor.....	2011
County Prisons.	
Jails.	
built and repaired by commissioners.....	2012
five apartments.....	2013
heated.....	2014
bedding furnished.....	2015
prison bounds.....	2016
bonds returned to court.....	2017
bond on capias in civil action.....	2018
Prisoners kept and cared for.	
United States prisoners kept.....	2019
jailer to cleanse jail, furnish food and water.....	2020
may purchase necessities.....	2021
escape apprehended, guard; compensation.....	2022
prisoners to pay charges.....	2023
guarding and removing, by what county paid.....	2024
transferred to successor by indenture.....	2025
care of tuberculous prisoners.....	2026
Of adjoining county used.	
by ministerial officers, when.....	2027
when no jail, or jail unsafe.....	2028
when jail destroyed.....	2029
Farming out prisoners.	
counties and towns may.....	2030
party hiring may prevent escape.....	2031
sheriff has control.....	2032
Convicts on the public roads.	
what convicts so sentenced.....	2033
under control of county authorities.....	2034
when sentenced to state's prison.....	2035
when state's prison to send convicts to county.....	2036
taxes levied to maintain.....	2037
Houses of correction.	
commissioners may establish.....	2038
taxes may be levied.....	2039
bonds may be issued.....	2040

(See also Index to Forms.)

(References are to sections.)

County prisons (continued).	Section
Houses of correction (continued).	
governor notified of establishment of.....	2041
directors appointed; duties.....	2042
term of office of directors.....	2043
manager appointed; bond given.....	2044
manager to assign employment.....	2045
compensation of officers.....	2046
sheriff to convey persons committed.....	2047
absconding offenders punished.....	2048
vagrants may be released, when.....	2049
suits in name of county.....	2050
Joint houses of correction.	
two or more may join.....	2051
board of directors appointed.....	2052
general managers appointed.....	2053
County Revenue.	
Taxes and fines.	
taxes collected by sheriff.....	2054
statement of fines kept by clerk.....	2055
finances paid treasurer, when; for schools.....	2056
commissioners expend county funds.....	2057
Reports of officers.	
made annually.....	2058
compelled.....	2059
registered.....	2060
penalty for failure to make.....	2061
Claims.	
demand before suit.....	2062
itemized and verified.....	2063
numbered as presented.....	2064
numbered as allowed, when.....	2065
annual statement published.....	2066
Finance committee.	
election and duties.....	2067
oath.....	2068
powers of.....	2069
penalty of officer failing to settle.....	2070
statement by, published.....	2071
County Surveyor. See "Surveyors."	
vacancy filled by county commissioners.....	1998
County Treasurer, when elected.....	2072
how abolished.....	2073
includes persons acting as such; treasurer of county board	
of education.....	2074
sheriff acting as such, bond liable.....	2075
duties.....	2076
not to speculate in county claims; forfeits office thereby..	2077
administers property held in trust for county.....	2078
to take charge of county trust funds; additional bond re-	
quired.....	2079
commissioners to keep a record of trust funds.....	2080
exhibits amounts and condition of trust funds.....	2081
pays no claim unless audited.....	2082
books, papers and money delivered to successor.....	2083
action on bond brought by commissioners.....	2084
officers failing to account to treasurer sued by county com-	
missioners.....	2085

(See also Index to Forms.)

(References are to sections.)

	Section
Court, expiration of term during trial.....	209
continuance of term of.....	209
the word means "clerk," when.....	841
relief in vacation of.....	1046
order of business for.....	1021
trial by the.....	1028
death between verdict and judgment.....	1051
surveys ordered by.....	2093
return on notice evidence of service.....	1323
Courts-Superior.	
Officers of.	
judges to take oath of office.....	2086
vacancies, how filled.....	2087
power to discharge drunken solicitor.....	2088
Jurisdiction.	
original.....	2089
in vacation or at term.....	2090
appellate.....	2091
equity cases transferred to.....	2092
surveys in disputed boundaries.....	2093
contiguous lands held under one survey, how.....	2094
civil process and motions at criminal terms.....	2095
no grand jury drawn nor criminal process returnable to or solicitors attend, civil terms.....	2096
rotation of judges.....	2097
court adjourned by sheriff when judge not present.....	2098
Special term.	
what judge holds; exchange of courts.....	2099
how ordered.....	2100
notice of.....	2101
certificate of attendance; compensation.....	2102
grand juries for.....	2103
jurisdiction.....	2104
all persons must attend; process not returnable to.....	2105
subpoenas returnable to.....	2106
Practice.	
minutes read each morning.....	2107
nonsuit not allowed after verdict.....	2108
suit for penalty, plaintiff may reply fraud to plea of release.....	2109
suits on bond; defendant may plead satisfaction.....	2110
sum due with interest and costs, discharges penalty of bonds.....	2111
proceeds of judicial sales collected on motion.....	2112
judicial sale confirmed, purchaser deemed owner.....	2113
procedure after appeal.....	2114
officer attending juries sworn.....	2115
Quakers may not wear hats in court.....	2116
Process.	
return on notice, evidence.....	2117
when directed to officer of an adjoining county.....	2118
sheriff interested and no coroner, issues to officer of ad- joining county.....	2119
Courtesy, Tenancy by, lost by divorce a vinculo.....	2679
lost by certain acts of husband.....	2681
destroyed by will of wife.....	2668
Court-houses, establishment and maintenance.....	2012

(See also Index to Forms.)

(References are to sections.)

	Section
Crimes, committed on waters dividing counties.....	174
act in one jurisdiction, effect in another, venue where	175 to 178
committed across State line.....	177
divided into felonies and misdemeanors.....	234
abandonment of wife and children.....	299 to 301
abduction of children.....	302, 303
abduction of children by parents.....	318
abduction of married woman.....	304
abortion	573, 574
accessories before the fact.....	230 to 233
accessories after the fact.....	232
adultery	294
adulteration of food.....	393
adulteration of drugs.....	603
adulteration of turpentine	800
adulteration of spirituous liquors.....	465
advertisements and legal notices, destruction of.....	664, 665
animals, contagious diseases of, violations of regulations..	273 to 241
animals, cruelty to.....	242 to 245
animals, stray	249
animals, false representation as to pedigree of.....	250
animals, unlawfully impounding.....	252
animals, impounded, releasing or receiving.....	253
animals, impounded, to be fed and watered.....	254
animals, impounder of, misappropriating money.....	255
animals, injuring while not inclosed with lawful fence....	256
animals, injuring while in range.....	257
animals, driving from range.....	257
animals, killing and failing to show hide and ears.....	258
animals, killing unmarked in certain counties.....	259
animals, mismarking or altering marks.....	260
animals, poisoning with shrubs.....	261
animals, allowing to run at large in stock-law territory	262, 265
animals, allowing to run at large from stock-law territory.	265
animals, allowing stone-horses or stone-mules not to run at large	266
animals, diseased, meat of.....	391
appraisers, malfeasance of.....	540, 541
apprentices, desertion of employer.....	1518
architect failing to furnish statement.....	618
arson	278
artificial islands	498
assault	575
assault, person charged with higher offense, convicted of..	211
assault to point gun or pistol at person.....	577
assault, secret	576
assault with intent to commit rape.....	593
assignee for creditors failing to perform duties.....	644
assignments, fraudulent	1715 to 1721
automobiles, regulated	761, 762
banks, regulations relating to.....	267 to 269
bawdy-houses	291, 291a, 697a
bear-baiting	244
bigamy	305
birds, killing and exporting.....	421. See "Game."
birth of child, concealing.....	578
blackmailing	374

(See also Index to Forms.)

(References are to sections.)

Crimes (continued).	Section
board of supervisors failing to report.....	738
boats and canoes, removal of.....	499
boats, obstruction of passage of.....	516
boilers, tampering with.....	622
bottlers protected.....	827a
bribery of elector.....	332
bribery of legislator.....	525
bribery of witnesses.....	652
bribery of jurors.....	652
bribery of officers.....	523, 524
bridges, injuring.....	739
bridges, failure to maintain.....	741
bridges, vessels not to be fastened to.....	742
bridges, fast driving over.....	748
bridges, mill owners to keep up.....	740
buggery.....	594
building and loan associations.....	270 to 272
building unsafe, allowing to stand.....	771
building, owner or builder of, failing to comply with law....	767
building, removing from, notice of condemnation.....	768
buoys interfered with.....	500, 501
burglary.....	273 to 277
burnings.....	278 to 290
butchers' records.....	772
butter, sale of regulated.....	798
canals, obstructing.....	320
carnal knowledge of girl between ten and fourteen.....	292
carnal knowledge of woman by personating her husband..	579
carnal knowledge of woman by personating her husband, attempt.....	580
camp-fires, failure to extinguish.....	290
capitol grounds protected.....	699, 702, 703
castration.....	581, 582
cattle. See "Cattle" and "Fences," and "Animals" and sub-division "Animals" under "Crimes."	
cattle, altering brand or driving from range, etc.....	260, 252
cattle, driving from range to secure poundage, etc.....	252
cattle, impounded, regulation as to.....	252 to 255
chain-gang, officer ordering woman to work on.....	551
challenge, sending or accepting.....	583
chastity, crimes against.....	291 to 298
cheating minors.....	375
children, carelessly exposing to fire.....	764
child, concealing birth of.....	578
child labor in factories.....	306 to 309
clerks. See "Clerks."	
clerks acting before qualification.....	520
clerks of courts practicing law.....	596
clerks, malpractice of.....	547
clerks, neglect of duty by.....	547
clerks, failure to deliver records to successor.....	531
cock-fighting.....	244
commissioners not to be contractors.....	527
commissioners. See "County Commissioners."	
concealing birth of a child.....	578
concealed weapons, carrying.....	663
contagious diseases of animals, violation of rules regulat- ing.....	237 to 241, 389 to 390, 392, 397

(See also Index to Forms.)

(References are to sections.)

Crimes (continued).	Section
contracts, agricultural, violation of.....	311, 312
contractors. See "Liens."	
corporation officer failing to pay taxes.....	754
corporation officers refusing information to officers of law	654
corporation commission, witnesses before.....	646
costs, refusal of justice to furnish bill of.....	543
cotton, sale and purchase of.....	782
cotton in the seed, sale and purchase of.....	781
cotton, weighing of, regulated.....	785
cotton weigher, acting without taking oath.....	784
cotton seed meal, sale of, regulated.....	783
county claims, speculating in.....	530
county commissioners approving bond known to be insuffi- cient	528
county commissioners not hearing jail.....	529
county treasurer. See "County Treasurer."	
county officers, failing to perform duties.....	531, 545, 547
crime against nature.....	293
crop pests, preventing investigation of.....	668
crops. See "Landlord and Tenant."	
crops, landlord seizing.....	619
crops, lessee disposing of.....	620
cruelty to animals.....	242 to 245
dams, injuring	633
deadly weapons, sale of, to minors.....	803
defrauding inn-keepers	385
dentistry, practicing without license.....	597, 598
detectives going armed.....	658
directors not to become contractors.....	527
diseased animals, meat of.....	391
diseases of animals, contagious, violation of rules relating to.....	237 to 241, 389 to 390, 392, 397
disorder in public buildings or grounds.....	699
disorder in presence of religious congregation.....	661
dispensary regulations. See "Liquors."	
disposing of mortgaged property.....	382
disturbing picnic parties, etc.....	659
disturbing schools etc.....	659
disturbing religious congregations.....	660, 661
disturbing elections	331
docks of Wilmington, incumbent.....	502
dogs. See "Dogs".....	246 to 248, 453
domestic relations.....	299 to 319
drainage	320 to 329
druggists. See "Druggists," "Pharmacists," etc.	
drunkenness, public.....	688
dueling	583, 584
dynamite, use and sale of, regulated.....	763, 786
dynamite cartridges used to kill fish.....	Revisal 2466
elections, bribery of voters.....	332
elections, betting on.....	320
elections, violations of the laws regulating.....	330 to 348
elections, disturbing	331
electric wires.....	818, 820
electric power transmission lines.....	620a
electric and steam appliances.....	621
elopement with married woman.....	304
embalming without license.....	599

(See also Index to Forms.)

(References are to sections.)

Crimes (continued).	Section
embezzlement.....	349 to 356
entering horse at fairs fraudulently.....	376
engine, tampering with.....	622
enticing seamen away.....	510 to 513
enticing minors to leave the state.....	585
enticing servant away.....	310
escape.....	532, 613, 614
excursion, disturbing.....	659
executors. See "Executors and Administrators."	
exhibiting stud or jack.....	660
factories, labor of children in.....	306 to 309
fairs, injuring exhibits at.....	623
fairs, violation of rules of.....	376
fairs, disorderly persons seeking to enter.....	624
false lights on seacoast.....	377
false pretense.....	379
false pretense; obtaining signatures.....	380
false pretense; obtaining advances upon.....	381
false pretense; obtaining goods on promise to work.....	378
false pretense; obtaining certificate of registration of cat- tle.....	251
false pretense; giving worthless checks, etc.....	381a
false returns of school committee.....	807
feeding stuffs, concentrated commercial.....	776, 777, 797
felon, voting.....	334
felony and misdemeanor defined.....	234
fence. See "Fences."	
fence, common, unlawful to remove.....	358
fence, division, removing.....	358
fence, injuring.....	359, 628
fence, wire, unlawful to cut.....	359
fence in stock-law territory.....	357
fertilizers.....	787 to 791
finer, failure to report.....	534, 549
fires. See "Burnings" under "Crimes."	
fish, unlawful for non-residents to catch for market with- out license.....	362
fishing on Sunday.....	812
fisheries, injuring structures for fishing purposes.....	360, 361
fish, poisoning.....	363
fish, mountain trout.....	364
food, adulteration or misbranding of.....	393
forcible entry and detainer.....	625
forgery, how punished.....	365
forgery, issuing counterfeit stock.....	367
forgery, selling false judgments.....	371
forgery in petitions and other papers.....	372
forgery, counterfeiting and passing counterfeit coin.....	368
forgery, instruments of counterfeiting.....	369
forgery, connecting parts of bank notes.....	366
forgery, counterfeiting trade-marks 822, 825. See "Trade- marks."	
forgery, selling goods having counterfeit trade-marks....	821
forgery, counterfeiting brands.....	822, 825
forgery, deeds, notes, etc.....	370
forgery, uttering forged paper.....	373
fornication and adultery.....	294
frauds, generally.....	374 to 385

(See also Index to Forms.)

(References are to sections.)

Crimes (continued).	Section
frauds upon minors.....	375
fraudulent entries at fairs.....	376
frauds upon inn-keepers.....	385
fraud by certain public officers.....	527
fraudulent assignments.....	1715 to 1721
fraudulent registration of animals.....	251
futures, dealing in, prohibited.....	792 to 795
gambling, keepers of taverns allowing.....	671
gambling, games of chance.....	670
gambling, betting at cards in tavern.....	671
gambling, faro-banks and tables.....	672
gambling, gaming tables other than faro.....	673
gambling, persons allowing gaming tables on their premises.....	671, 674
gambling, lotteries forbidden.....	680
gambling, sale of lottery tickets prohibited.....	682
gambling, advertisement of lottery prohibited.....	681
gambling, officers directed to destroy gaming tables.....	675
gambling, witnesses may be summoned and examined....	676
gambling, money bet may be seized.....	677
gambling, obstructing seizure of money bet.....	678
gambling, betting on elections.....	330
gas and electric meters, etc., tampering with.....	621
gas company, injuring property of.....	626
gates, injuring.....	749
gates, leaving open.....	749
ginseng, digging.....	669
ginseng, larceny of.....	454
gold, misbranding.....	384
graves, opening and robbing.....	627
graveyards, injury to private.....	636
guardians. See "Guardian and Ward," and "Embezzlement."	
habeas corpus, failure to make copy of commitment.....	552
habeas corpus, recommitting one discharged on.....	536
habeas corpus, false return to writ.....	537
habeas corpus, concealing person entitled to.....	538
harboring another's servant.....	319
harboring deserting seamen.....	511
health, offences against the public.....	389 to 407
highways, overseer neglecting duty.....	753
highways, failing to work.....	747
hiring another's servant.....	319
hog-cholera, prevention of.....	240, 241
homestead, officer conspiring with debtor or creditor..	540, 541
homestead, failing to lay off.....	539
homicide, manslaughter, punishment for.....	587
homicide, manslaughter, punishment for second offence...	588
homicide, murder.....	586
horse-stealing.....	457
house, injury to.....	628, 641
house, wrongful occupancy of.....	640
hunting. See "Hunting," "Game," and "Sunday."	
hunting for deer by fire-light.....	411
impersonation of husband.....	579
incest.....	295, 296
indecent, public.....	689
injury to houses, etc.....	628, 641
inn-keepers, defrauding.....	385

(See also Index to Forms.)

(References are to sections.)

Crimes (continued).	Section
insane, giving or selling liquor to.....	470
insane, commitment of non-resident.....	546
insane, assisting to escape from hospital.....	649
insane, hospitals, rules of.....	650
insolvent tax-payers, failure of officer to publish list of...	542
inspector, falsely acting as.....	535
insurance, offenses against law of.....	432 to 449
intimidation of voter.....	333
intimidation of jurors and witnesses.....	651
islands, artificial.....	498
jailers, malfeasance of.....	615, 616
junk dealers.....	706
jurors, bribing.....	652
jurors, intimidating.....	651
justices of the peace. See "Justices of the Peace."	
justices of the peace forbidden to practice law.....	596
justice of the peace acting without qualifying.....	520
justice of the peace acting after removal from township..	544
justice of the peace failing to turn over books, etc....	533, 553
justice of the peace failing to furnish bill of costs.....	543
kidnapping.....	589
lands. See "Trespass."	
landlord. See "Landlord and Tenant."	
landlord violating contract.....	311, 312
landmarks, removing.....	629
larceny of bank notes.....	450
larceny by servant.....	451
larceny of horses, etc.....	457
larceny of horse for temporary use.....	461
larceny, pursuing or injuring live stock.....	456
larceny of growing corn, etc.....	455
larceny of wood, etc., growing or being upon land.....	464
larceny of stranded goods by finders.....	503
larceny of public records.....	460
larceny of wills.....	463
larceny of public documents.....	460
larceny of branded timber.....	824, 826, 827
larceny by insurance agent.....	440
larceny of dogs.....	453
larceny of ginseng.....	454
larceny, receiving stolen goods.....	459
larceny of court records, etc.....	460
larceny, temporary use of automobiles, etc.....	462
larceny, distinction in degrees abolished.....	452
larceny, punishment for.....	458
law, practicing.....	596
legislator, bribery of.....	525
letters, opening, etc.....	683
lewd women and college students.....	297
libel.....	590, 2580 to 2582
license tax, failure to pay.....	755
lien, secreting property to hinder enforcement of.....	383
liquor, adulteration of.....	465
liquor, selling receipt for adulteration of.....	466
liquor, dispensary officer or employee violating rules....	467
liquor, drinking on, or refusing to leave, dispensary prem- ises.....	468
liquor, druggists failing to keep record of sales of.....	469

(See also Index to Forms.)

(References are to sections.)

Crimes (continued).	Section
liquor, furnishing to inmates of institutions	470
liquor, sales of, in local option territory.....	471
liquor, sale of, by druggists.....	472
liquor, unauthorized purchase of, by dispensary officers...	473
liquor, dispensary officers receiving gifts, etc.....	474
liquor, manufacture of, outside of towns.....	475
liquor, manufacturing or selling poisonous.....	476
liquor, minors excluded from bar-room, etc.....	476a
liquor, purchase for minors, from dispensary.....	477
liquor, sale of, to minors.....	478
liquor, sale of to minors entitles parent, etc., to exemplary damages	479
liquor, lack of diligence in enforcing law by officers....	480
liquor, offenses by physicians and druggists.....	481
liquor, sale of, within two miles of political speaking....	482
liquor, sale of in towns without license.....	483
liquor, sale of outside of incorporated towns.....	484
liquor, sale of, within 200 feet of church.....	485
liquor, selling in towns having dispensaries.....	486
liquor, sale of, on Sunday.....	487
liquor, permitting unlawful distilleries on one's land....	488
liquor, sale through agents.....	489
liquor, sale of wine.....	490
liquor, sale of on election days.....	335
live stock, shipping, on Scuppernong river.....	630
lotteries	680 to 682
lynching	653, 654
machinery, tampering with.....	622
maiming	591
malicious injury to real property.....	632
malicious injury to personal property.....	631
marl pits to be enclosed.....	765
marriage with female under fourteen.....	313
marriage between negroes and whites.....	314, 315
marriage license, obtaining for persons under age.....	316
marriage without license.....	317
married woman, abduction of.....	304
meat, diseased	391
medicine, practicing, without license.....	600 to 602
meridian monuments protected.....	700
military companies, unlawful to organize.....	493
military companies, regulations of.....	491 to 497
mill-owners failure to keep up bridges.....	740
mill-owners keeping false toll-dishes.....	634
mill-dams, etc., injury to.....	633
mines	766
minors, enticing beyond State.....	585
minors, unlawful to allow in bar-rooms, etc.....	476a, 684
minors, unlawful to sell cigarettes to.....	773, 774
minors, selling liquor to.....	476a to 479
minors, selling weapons to.....	803
minors, refusing to pay wages to.....	375
misbranding food.....	393
misbranding gold or silver articles.....	384
money, substitutes not to be circulated.....	666, 667
monuments, removal of, or injury to.....	635
mortgaged property, disposing of.....	382
mortgaged property, secreting.....	383

(See also Index to Forms.)

(References are to sections.)

Crimes (continued):	Section
murder. See "Homicide."	
murder, divided into degrees.....	586
narcotic, sale of, regulated.....	394
national guard.....	491 to 497
navigation	498 to 519
notices, mutilating or defacing.....	664, 665
nuisance, failure to abate.....	395
obscene books, sale of.....	686
obstructing canals	320
obstructing inspector of concentrated feed stuffs.....	797
officers of the State failing to report.....	550
officers, crimes of	520 to 565
officers, contracting for their own benefit.....	527
officers, failing to pay over fines, etc.....	549
officers, failing to turn over papers, etc., to person ad- judged entitled	556
officers failing to perform their duties.....	531
offices, buying and selling.....	526
officer, resisting an.....	655
officer, acting without qualifying	520
officer, failing to aid.....	656
oleomargarine	798
ordinance, violation of a town.....	657
peddling without license.....	757
peddler's license, when granted.....	1995 (18)
pedigree of animals, false representation as to.....	250
pensions, misconduct of officers in relation thereto.....	548
pension claims, speculation in.....	687
perjury.....	566 to 570, 572
perjury, subornation of.....	571
perjury by voter.....	336
pests to crops, violating rules relating to.....	679
pests to crops, preventing investigation.....	668
pharmacist adulterating drugs.....	603
pharmacy, practicing without license.....	604 to 609
phosphate rock removed from rivers.....	701
picnic parties, disturbing.....	659
poison, selling unlabelled.....	610
poison, sale of, regulated.....	799
poisoning fish.....	363
poisoning persons	586
poisoning cattle	261
political meeting, disturbing.....	659
political societies, secret, prohibited.....	388
practicing trade or profession without paying license tax..	2878 of Revisal
practicing dentistry without license.....	597, 598
practicing medicine without license.....	600 to 602
practicing law	596
practicing embalming without license.....	599
practicing pharmacy.....	604 to 609
prison, breaking	612
prisoners, confining in improper apartments.....	615
prisoners, injuring	616
prisoners, conveying weapons, etc., to.....	617
prize-fighting	662
public buildings, disorder in.....	699

(See also Index to Forms.)

(References are to sections.)

Crimes (continued).	Section
public drunkenness	688
public indecency	689
public grounds protected.....	699, 698, 702 to 704
punishment for felonies not specified.....	235
punishment for misdemeanors not specified.....	236
quarantine regulations.....	398 to 400, 403
railroads. See "Railroads."	
railroads, discriminating in charges.....	710
railroads, discrimination against A. & N. C. R. R.....	711
railroads, discrimination against connecting lines.....	712
railroads, entering freight cars or breaking seals thereon...	714
railroads, metals of, protected.....	706
railroads, profanity on passenger trains.....	708
railroads, cars to be cleaned.....	709
railroads, failure to construct cattle guards and crossings.	715
railroads, obstructing	717
railroads, injuring, without malice.....	718
railroad cars, throwing or shooting into.....	727
railroad trains, to be arranged how.....	705
railroad trains, robbing.....	730, 731
railroads, rates.....	733 to 736
railroads pooling freights and allowing rebates.....	726
railroad officers failing to account to successors.....	724
railroad engineer, conductor or brakeman intoxicated....	722
railroads, work on Sunday.....	815
railroads, hours of service of employes.....	716
railroads, public drinking on.....	721
railroads, intoxicated operatives.....	722
railroads, malicious removal of waste or packing.....	723
railroads, injury to.....	719
railroads, failing to maintain cattle guards.....	715
railroad cars, entering after being forbidden.....	713
railroad cars, intoxicated persons entering.....	720
railroads, riding on without paying fare.....	707
railroads, refusing to ride in second-class car.....	725
railroads, building, without authority.....	732
railroad tickets, dealing in.....	729
rape	592, 593, 594, 579
real property, tenant injuring.....	641
rebellion and insurrection.....	386, 387
receiving stolen goods.....	459
register of deeds. See "Register of Deeds."	
register of deeds failing to perform his duties.....	554
register of deeds failing to index instruments.....	555
registration, fraudulent, of animals.....	251
religious congregation, disorder in presence of.....	661
religious congregation, stud-horses, etc., not to be brought near	660
religious congregation, no sales of liquor, etc., near.....	485
reports, false, swearing to.....	560
resisting an officer.....	655
roads. See "Roads."	
roads, barbed wire fences along.....	737
roads, damages to.....	745, 746
roads, leaving gates open.....	749
roads, obstructing making.....	752
roads, failing to work.....	747
roads, high-water marks.....	750

(See also Index to Forms.)

(References are to sections.)

Crimes (continued).	Section
roads, injuring sign-posts on.....	751
roads, overseer neglecting duty.....	753
roads, supervisors failing to perform duty.....	738
roads, unlawful to work female convicts on.....	551
roads, unlawful to obstruct when leading to church, etc. 744,	752
sale of adulterated food.....	393
sale of diseased meat.....	391
sale of misbranded gold or silver articles.....	384
sale of misbranded food.....	393
sale of poison without label.....	610
sales to butchers, record of.....	772
sales of cigarettes to minors.....	773, 774
sales of cocaine, opium, morphine.....	775
sales of concentrated feed stuffs.....	776, 777
sales of corn.....	778
sales of corn meal.....	779
sales of cotton.....	780
sales of cotton in seed.....	781
sales of cotton at night.....	782
sales of peanuts.....	781
sales of cotton seed meal.....	783
sales of dynamite.....	786
sales of fertilizers.....	787 to 791
sales of futures.....	792 to 795
sales of metals.....	796
sales of oleomargarine.....	798
sales of poisons.....	610, 799
sales of tobacco.....	801
sales of turpentine.....	800
sales of property stored in public warehouses.....	802
sales of weapons to minors.....	803
sales of school books.....	804, 805, 806
sale of narcotics regulated.....	394
saw dust in streams.....	328
schools, disturbing, or injuring property of.....	809
schools and contagious diseases.....	389, 390
school supplies, purchase of.....	806
school census returns.....	807
school funds, to be reported by treasurer.....	810
school funds, misappropriation of.....	808, 810
scrip.....	666, 667, 685
seamen, enticing away.....	510 to 513
secret political societies.....	388
secreting property to hinder enforcement of lien.....	383
seduction under promise of marriage.....	298
servant, enticing away.....	310
servant, hiring or harboring another's.....	319
sheriff. See "Sheriffs."	
sheriff, failing to return venire facias.....	557
sheriff, failing to obey commitment from adjoining county	558
sheriff failing to publish delinquent tax-payers.....	542
sheriffs, etc., making no, or false return.....	559
shooting in Dare county.....	690
sign-posts, injuring.....	751
silver, misbranding.....	384
slander of an innocent woman.....	595
spring, contaminating.....	834
steam appliances.....	621, 622

(See also Index to Forms.)

(References are to sections.)

Crimes (continued).	Section
stevedores acting without license.....	759
stock. See "Animals" under "Crimes."	
stock-law territory regulations.....	262 to 265
stranded property to be reported.....	503
strays.....	249
streams, obstructing.....	514 to 516
streams, dammed, to have gates.....	329
streams, saw-dust in.....	328
streams, poisoning.....	363
street cars regulated.....	728
street cars to have vestibule fronts.....	769
street cars to have fenders.....	770
Sunday trains.....	815
Sunday, hunting on.....	813, 814
Sunday, fishing on, with nets, seines, etc.....	812
Sunday, sale of intoxicating liquors on.....	487
surveyors.....	639
swearing falsely to report.....	560
tax collector failing to publish list of delinquents.....	542
tax list, officer failing to allow, to be examined.....	756
taxes.....	754 to 760
telegrams, violation of secrecy of.....	683, 817
telegraph poles; injury to.....	818
telephone messages, violation of secrecy of.....	819
telephone wires, disconnecting or injuring.....	816
tenant removing crop.....	620
tenant surrendering to other than landlord.....	637
tenant injuring real property.....	641
tenant violating contract.....	311, 312
timber, branded.....	824 to 827
timber, cutting, without grant.....	698
town aldermen failing to appoint inspectors.....	562
town aldermen failing to fix fire limits.....	563
town officers failing to pay over money.....	564
town officers inspecting buildings.....	565
town ordinance, violation of.....	657
trade-marks.....	821 to 827a
trained nurse, license.....	611
tramps.....	691 to 694
treasurer of the State, malfeasance.....	561
trespass, cutting timber from another's land.....	642
trespass upon lands of another.....	643
trespass, by riding or driving stock.....	263, 264
trespass upon public lands.....	698, 702 to 704
trespass, removing fruits, etc.....	628
trusts prohibited.....	695, 696
trustee in deed of assignment failing to perform duties....	644
turpentine, adulteration of.....	800
usury.....	828
vaccination, violation of rules relating to.....	404
vagrancy.....	697, 697a, 691 to 694
vessels, unlawful to anchor to buoys.....	501
vessels, unlawful to anchor in range line of lights.....	505
vessels, to exercise diligence in passing buoys.....	500
vessels of, bottlers protected.....	827a
violation of town ordinance.....	657
watersheds protected.....	829 to 834
wagoners not extinguishing camp fires.....	290

(See also Index to Forms.)

(References are to sections.)

Crimes (continued).	Section
warehouses, public, wrongful sale of property stored in...	802
water courses, obstruction of.....	514 to 516
water-lines, damaging:.....	406, 407
water-supplies to be protected.....	405 to 407, 829 to 834
well, contaminating.....	834
wires, protection of.....	820
witness before board of internal improvements.....	648
witness failing to appear before committee of general assembly.....	647
witness before corporation commission.....	646
witness, bribing.....	652
witness, intimidating.....	651
witness, before county board of education.....	811
woman, ordering to work on chain gang.....	551
woods, burning.....	289, 290
wrecked property to be reported.....	503
Criminal jurisdiction of justice	87
Criminal Procedure , who may issue criminal process.....	97
duty of magistrate on complaint.....	98
where warrant to run.....	99
endorsement of warrant.....	90, 100
improper endorsement, magistrate not liable.....	101
arrested person taken before magistrate.....	102
bail granted if offence not capital.....	147
bail granted, to be certified.....	148, 151
bail not allowed.....	147
where warrant returned.....	102
removal of trial from justice.....	46, 47
associating another justice.....	95
preliminary hearing.....	129 to 146
examination waived by defendant.....	129
waiver of examination by defendant.....	129
procedure when justice has not final jurisdiction.....	130
examination of evidence against prisoner.....	131, 132
examination of prisoner.....	133
prisoner to be cautioned.....	133
prisoner may have counsel.....	91, 132
prisoner may cross-examine witnesses.....	132
prisoner's answers to be written down.....	135
prisoner may introduce evidence.....	136
prisoner not examined in presence of witnesses.....	134
witnesses may be separated.....	134
evidence of witnesses written down.....	132
examination of prisoner in misdemeanor not required....	137
prisoner discharged when.....	139
prisoner bound over when.....	142
witnesses bound over.....	143
witnesses required to give bond.....	144
witnesses not giving bond committed.....	172
evidence taken before magistrate to be certified to and used in superior court.....	148
penalty on magistrate failing to make required return....	149
justice having jurisdiction to dispose of case.....	198
jury allowed in magistrate's court.....	199
jury to pass on what.....	200
appeal by prisoner.....	217
papers transmitted by justice to clerk of superior court	203, 218

(See also Index to Forms.)

(References are to sections.)

Criminal Procedure (continued).	Section
copies of warrant, etc., to be furnished by justice.....	202
justice's finding and sentence bars another indictment....	202
costs to be taxed.....	1926 to 1940, 1968 to 1974
payment of costs enforced.....	1969, 1974
return of all criminal actions to be made by magistrates	145, 203
bail allowed when.....	147
duty of magistrate granting bail.....	152
bail allowed by whom.....	147 to 150
bail bond to be filed with clerk.....	151
mortgage given in lieu of bond.....	1563 1564
bail allowed by magistrate on continuance.....	153
bail may arrest principal.....	166
substitute bail allowed to surrender principal.....	166
sheriff, etc., may take bail.....	147
bail may plead any defence open to principal.....	169
commitment to show what.....	170, 201
commitment to be where.....	171
imprisonment to be where.....	92, 171
process, etc., not quashed for want of form.....	194, 58
amendments allowed	58
fees not demandable in advance.....	1931
crimes committed on waters dividing counties.....	174
venue, improper	179
act in one jurisdiction, effect in another, venue where	176 to 178
persons present at breach of peace to arrest offender..	114, 115
arrest to be made by officers without warrant, when.....	116
houses may be broken open to prevent felony.....	117
houses may be broken open by officers, when.....	118
arrest by persons in whose presence felony is committed..	115
persons arrested without warrant to have immediate hear- ing	120
outlawing of fleeing felons.....	122
no person arrested on presentment nor tried except on in- dictment	180
indictment for misdemeanors to be found in two years....	88
criminal process issuable and returnable at any time....	89
sheriff to make endorsement on process.....	90
bail allowed in case of appeal.....	222, 223
argument of counsel may be limited.....	1543
persons compelled to assist officers in making arrests....	119
indictment, returned how	182
indictment to, set forth substance of proceedings.....	183
bill of particulars	184
indictment for perjury, sufficiency of.....	186
indictment for perjury, form of.....	187
indictment for subornation of perjury.....	188
indictment to state former conviction, when.....	189
indictment can not be waived in certain cases.....	197
indictment, form of, when joint property.....	190
indictment for embezzlement, sufficiency of.....	192
indictment not quashed, when.....	194, 195
indictment for murder and manslaughter.....	185
indictment, certain defects of, not to vitiate.....	196
indictment for larceny of money, sufficiency of.....	191
intent to defraud, allegation and proof.....	193
indictment for one crime, conviction of lesser degree	211 to 214
indictment for libel.....	210
libel	210

(See also Index to Forms.)

(References are to sections.)

Criminal Procedure (continued).

	Section
plea of not guilty entered for mute defendant.....	204
challenging jurors.....	205 to 207
restitution to person robbed.....	94
new trials may be granted defendant.....	215
witnesses and their fees.....	1975 to 1983
remission of recognizances.....	160
convicted persons must pay costs.....	1968, 1984, 1985
post-mortem examinations to be directed.....	93
persons participating in unlawful gaming compelled to testify	2200, 2251
expiration of term of court during trial.....	209
continuance of term of court.....	209
youthful offenders sent to house of correction.....	216a
appeal by defendant to supreme court.....	220
appeal does not vacate judgment.....	224
stay of execution on appeal.....	224
appeal in forma pauperis.....	221
appeal by the state in what cases.....	219
what the commitment shall set forth.....	201, 170
execution of capital offenders.....	227 to 229
grand juries coming into court.....	182
drunken solicitor to be discharged.....	2088
peace warrants, proceedings on.....	105 to 113
persons committing breach of peace in presence of court.	107
fugitives from justice, who may arrest.....	122, 123
magistrate to transmit records to governor.....	124
duty of governor in such cases.....	125
sheriff or jailer to surrender fugitive.....	126
governor may offer reward for fugitive.....	127
expenses of capturing fugitive.....	128
search warrants.....	103, 104
costs in.....	1926 to 1935, 1968 to 1974, 1984, 1985
witnesses, regulations as to.....	1975 to 1983
defendant's witnesses paid by county, when.....	1967
giving surety for costs does not discharge judgment.....	1970
no person need criminate himself.....	2198
statute of limitations applicable to.....	88
criminal process issued and returned when.....	89
prisoner bailed or released if not tried.....	96
passenger conductors and depot agents given power to arrest	121
exclusion of by-standers in rape trials.....	138, 208
judgment for fines docketed, &c.....	128
execution for fines, etc.....	225
action upon receipt of opinion of supreme court.....	226
female prisoners not to be worked on roads.....	551

Cruelty to Animals. See "Cattle," "Crimes," sub-divisions "Animals" and "Cattle."

forbidden.....	242 to 245
bear-baiting, etc.....	244
impounded animals to be given food and water.....	254
carrying in conveyance in cruel manner.....	245
sale of diseased animals forbidden.....	391
word "Animal" explained.....	242

Dam, injury to..... 633

Deadly weapons, sale of, to minors..... 803

Deed. See "Probate," "Conveyances."

(See also Index to Forms.)

(References are to sections.)

	Section
Deer, hunting for, by firelight	411
Default, judgment by, none before justice	55
Defendant, defined	844
who to be.....	900
when to plead.....	963
notified of no personal claim against.....	1947
when only a part of defendants are served.....	945
served with summons after judgment.....	946 to 949
may be granted affirmative relief.....	1040, 1043
in criminal case may testify.....	2197
not compellable to give evidence against himself in criminal case	2198
Defense, after judgment where summons served by publication ...	939
when summoned after judgment.....	946 to 949
Demurrer, in magistrate's court	52, 53
in superior court.....	964 to 968
when may be entered.....	964
must specify grounds of objection.....	965
objection not appearing on complaint.....	967
objection, when deemed waived.....	968
sustained for misjoinder, action divided.....	966
to answer	975
to reply	976
amendments of course after.....	994
to evidence (Hinsdale Act).....	1026
Dentistry, practicing without license	597, 598
Deposition, how taken	1312, 2215
read on trial, when.....	2208
taken in this State for suits outside State	2218
in civil action before magistrate.....	2209
not quashed after trial begun.....	2210
objection made before trial.....	2211
powers of commissioner.....	2212
attendance before commissioner; how enforced.....	2213, 2214
commission issued by whom after removal.....	2205
in trying title to office.....	2217
before aldermen or county commissioners.....	2216
Description, of land in notice of mortgage sale	1793
of land as "adjoining," etc.....	1695
of land aided by parol evidence.....	2168
Detectives, going armed	658
Directors, of public institutions to have no interest in contracts ...	527
Disabilities, persons under	851, 852
cumulative	853
must exist when right of action accrues.....	854
Discontinuance	928
Disease (see "Health")	
Dispensary. See "Liquors."	
Distributions, statute of	1458
Disturbing, picnics, excursions, school entertainments, political meetings	659
schools, temperance, literary and scientific societies.....	659
religious congregations.....	660, 661
elections	331

(See also Index to Forms.)

(References are to sections.)

Divorce.	See "Husband and Wife," and "Marriage" and "Executors."	Section
	action for, triable at return term, when.....	974
	testimony by husband and wife.....	2199, 2128
	venue in cases of.....	2123
	a vinculo; consequences on personal relations.....	2679
Divorce and Alimony.		
	jurisdiction.....	2121
	bond for costs unnecessary.....	2122
	venue.....	2123
	what marriages may be declared void on application of either party.....	2124
	grounds for absolute divorce.....	2125
	from bed and board, grounds.....	2126
	affidavit to be filed with complaint; provisos.....	2127
	material facts found by jury; parties can testify to adul- tery.....	2128
	alimony on divorce from bed and board.....	2129
	alimony pendente lite.....	2130
	alimony without divorce, when.....	2131
	alimony in real estate, writ of possession issued.....	2132
	effects of absolute divorce.....	2133
	custody of children in divorce.....	2133a
Docket,	of justice, to be filed.....	12
	unfiled, delivered to successor.....	13
	filing of, how enforced.....	533
	delivery of, how enforced.....	533
	to be furnished justices.....	11
	justice to enter all proceedings on.....	61
Dogs,	failure to kill when mad.....	248
	sheep-killing.....	247
	bitches running at large.....	246
	listed for taxation, subjects of larceny.....	453
	taxed by cities and towns.....	3227
Dower.	See "Widows."	
	lost by divorce a vinculo.....	2679
	lost by certain acts of wife.....	2680
	general provisions.....	3340 to 3348
Druggists,	exempt from jury service.....	2549
	violating liquor law.....	469, 472, 2631
Dueling.		583, 584
Dynamite,	use and sale of, regulated.....	763, 786
	cartridges used to kill fish.....	Revisal 2466
Ejectment.	See "Landlord and Tenant."	
Election	of justices of the peace.....	4, 5
	disturbing an.....	331
	betting on.....	330
	intimidation of voter at an.....	333
	liquor selling on day of.....	335
	perjury by a voter.....	336, 338
	illegal voting at.....	334
	officer at, failing to discharge duty.....	337, 339
	permanent registration, taking false oath.....	338
	voting at more than one box.....	340
	registering unlawfully.....	340, 341
	returns of, failure to make.....	342

(See also Index to Forms.)

(References are to sections.)

Election (continued).	Section
returns, making false.....	343
returns, refusing copy of.....	344
officer acting after removal.....	345
list of tax-payers to be furnished in connection with.....	346
presenting false certificate of exemption from taxation...	347
tax receipt given without payment.....	348
Electric Companies.	
may use public highways.....	2134
may acquire easement in right of way.....	2135
may exercise right of eminent domain.....	2136
proceedings to condemn land.....	2137
copy of petition to be served.....	2138
proceedings same as for railroads.....	2139
commissioners to inspect premises.....	2140
Electric meters, and other fixtures, tampering with.....	621
Electric wires, protection of, from trees, etc.....	818, 820, 620a
Elopement with a married woman.....	304
effect of wife's, on property relations.....	2680
Embezzlement, indictment for.....	192
definition and punishment.....	352
by State officer.....	353
by public officer.....	352
by officer of benevolent or religious institution.....	355
by officer of railroad company.....	349, 350
of taxes.....	356
of fines, etc.....	549
arrest allowed in action for.....	1183 (2)
by surviving partner.....	351
of trust funds by officer.....	354
Endorsement of warrant by justice.....	100, 101
Engineer, intoxication of a railroad, a misdemeanor.....	722
Enticing away children, or minors.....	585
seamen.....	510 to 513
servants.....	310
apprentices.....	1519
Equity of Redemption, deed of sheriff selling.....	1086, 1088
Escape.....	532, 613, 614
of one in execution, sheriff liable.....	3144
Estates.	
estates in tail converted into fee simple.....	2141
joint tenancy; survivorship abolished, when.....	2142
survivorship among trustees.....	2143
how certain contingent limitations construed.....	2144
unborn infant in esse may take by deed.....	2145
heirs of living person construed to mean children.....	2146
conveyance to use possession transferred to use without livery of seizin.....	2147
rights of grantee of reversion against life tenant.....	2148
right of life tenant against grantee of reversion.....	2149
collateral warranties abolished; warranties by life tenant good only as to heir.....	2150
spendthrift trusts authorized.....	2151
titles quieted.....	2152
contingent remainders may be sold; procedure; proviso..	2153
sale of contingent remainders validated.....	2154

(See also Index to Forms.)

(References are to sections.)

Evidence.	Section
Statues.	
how proved	2155
Martin's collection; copies certified by secretary of state..	2156
laws of other states or foreign countries, how proved....	2157
town ordinances	2158
Grants, deeds and wills.	
copies certified by secretary of state	2159
copies of grants certified by clerk of secretary of state val-	
idated	2160
copies certified by register of deeds, evidence, when.....	2161
copy certified may be registered in another county and	
given as evidence.....	2162
evidence to support title under H. E. McCulloch.....	2163
grant or copy from proprietor, sufficient evidence of title	
under him	2164
deeds registered and lost, registry lost, presumed undue	
form	2165
copy of will.....	2166
written instruments proved otherwise than by attesting	
witnesses; not to affect registration.....	2167
evidence to fit the land to the description.....	2168
recitals in tax deeds in Haywood and Henderson.....	2169
copies of wills in secretary of state's office; proviso.....	2170
copies of wills recorded in wrong counties.....	2171
proved will lost, not recorded, copy evidence.....	2172
copies of grants in Burke.....	2173
copies of lost records in Bladen.....	2174
copies of records from Tyrrell.....	2175
copies of grants in Moore.....	2176
wills in Haywood.....	2177
records in Anson county.....	2178
Official writings.	
copies of official writings.....	2179
copies from public records of the state or United States	
evidence; how authenticated	2180
Records, etc., other states.	
records of administration and letters testamentary in	
other states, how certified.....	2181
wills or deeds in other states, how proven.....	2182
Counsel and physicians.	
fraud on the state, counsel must testify; proviso.....	2183
privilege of attending physicians and surgeons.....	2184
Accounts.	
book accounts under sixty dollars, and within two years..	2185
book accounts proved by personal representative.....	2186
copies of book accounts evidence, when.....	2187
itemized accounts evidence, when.....	2188
Life tables.	
mortality tables evidence.....	2189
present worth of annuities.....	2190
Competency of witnesses.	
not incapacitated by interest or crime.....	2191
not excluded by interest	2192
evidence of parties admissable; exceptions.....	2193
when one party to transaction is dead.....	2194
executors may testify as to estate in their hands, when;	
proviso	2195
party not competent, when.....	2196

(See also Index to Forms.)

(References are to sections.)

Evidence (continued).	Section
Competency of witnesses (continued).	
defendant competent in criminal actions; husband or wife competent for defendant.....	2197
defendant in criminal actions not compellable to give evidence against himself; nor husband or wife against each other	2198
husband and wife witnesses.....	2199
persons testifying in gambling not prosecuted.....	2200
lynching witness must testify; pardoned.....	2201
Attendance of witnesses.	
how procured	2202
how procured before jury of view, referee or commissioners	2203
when subpoena duces tecum may issue.....	2204
cause removed, subpoenas and commissions to take depositions issued from either county.....	2205
witness to attend until discharged; penalty non-attendance how paid; judgment nisi only.....	2206
not arrested in civil cases while attending court.....	2207
Depositions.	
what may be read on trial.....	2208
in justices' courts.....	2209
not quashed after trial begun.....	2210
objection taken before trial.....	2211
commissioners may subpoena witness and punish for contempt	2212
attendance before commissioner, how enforced.....	2213
remedies against defaulting witness before commissioner.	2214
how taken	2215
how taken in hearings before municipal authorities.....	2216
in quo warranto proceedings, how taken.....	2217
taken in the state, action in another state.....	2218
Writings, production, inspection.	
inspection before trial.....	2219
production on trial.....	2220
admission of genuineness procured.....	2221
Confederate currency.	
scale of depreciation.....	2222
Generally. See "Witnesses."	
against prisoner, to be heard.....	131
of prisoner to be heard.....	133
caution in taking prisoner's.....	133
of prisoner to be written down.....	135
may be introduced by prisoner.....	136
of prisoner not taken in presence of witnesses.....	134
of witnesses reduced to writing.....	132
taken before magistrate may be used in superior court...	145
persons participating in unlawful gaming compelled to testify	676, 2200, 2251
must be offered by plaintiff in magistrate's court although defendant does not appear.....	55
admission of writings.....	2221
examination of parties.....	1298 to 1306
examination of person for whom action is brought or defended	1305
examination of co-plaintiff or co-defendant.....	1306
copies of accounts as.....	56
parol to identify land admissible.....	2168

(See also Index to Forms.)

(References are to sections.)

Evidence (continued).	Section
section 590 of the Code.....	2194
town ordinance, how proved.....	2158, 3192
demurrer to	1026
against bawdy-house keepers.....	291
of service of process.....	936, 1323
Examination of defendant in criminal hearing.....	133 to 135
Examination of parties.....	1298 to 1306
Examination of witnesses. See "Witnesses."	
Exceptions, how taken.....	1029
Excursion, disturbing.....	659
Execution, stay of during appeal to Supreme Court.....	1078
of capital offenders.....	228, 229
on judgment of a justice, lien of.....	73
stay of, on judgment of a justice.....	74, 75
on judgment of a justice, when to issue.....	72
not stayed by appeal from justice's judgment.....	76, 81
stay of, on appeal from justice's judgment.....	74 to 79
form of, in action for purchase-money of land.....	1084
within three years of course.....	1076
money paid on judgment without.....	1064, 1065
after three years by leave of court.....	1077
enforcing judgments by.....	1072
kinds of	1073
to what counties to issue.....	1079
against married woman.....	1074
from what court issued.....	1080
return on, to be noted on docket.....	1093
return on, copy of, sent to other counties.....	1093
judgment nisi against officer failing to return.....	1093
against the person, when.....	1082
form of	1084
tested how	1081
what may be sold under.....	1086
deed of sheriff selling equity of redemption.....	1088
trust estates sold; trust discharged.....	1087
not to be levied on growing crop.....	1089
sale days under.....	1100
sale may be postponed.....	1102, 1103
sale, how advertised.....	1098
sale, notice served on defendant.....	1099
sales not permitted now under private statutes.....	1104
sale, time of.....	1101
sale of personal property, how advertised.....	1105
sale contrary to law; penalty.....	1106
sale not made for want of bidders.....	1102, 1107
personal property left with possessor pending sale; bond	1090 to 1092
officer allowed pay for keeping horses, etc.....	1094
officer to file his account.....	1095
sale, purchaser may recover for defective title.....	1096
against property of defendant dying in execution.....	1083
clerks to issue within six weeks.....	1075
officer to give deeds for property sold.....	1108
satisfied, sheriff to pay costs to clerk.....	1097

(See also Index to Forms.)

(References are to sections.)

Execution (continued).	Section
defendant's claim for improvements before issuing. See "Betterments" 1109 to 1123	
proceedings supplementary to—(see "Supplementary Proceedings.")	
debtor of judgment debtor may pay to sheriff.....	1131, 1132
property exempt from. (See "Exemptions.")	
sale; variance from judgment.....	1085
against executors, etc.....	1084, 1488
laborer's share of crop not liable to.....	2567
husband's interest in wife's land not subject to.....	2667
Executors. See "Administration."	
how to sue.....	894, 1486
death of, when parties to action.....	1480
made parties to action.....	906 to 908
actions against, where tried.....	911
actions against, at term.....	1455
of mortgagor, right of foreclosure.....	1781
when plaintiff can not testify against.....	2194
defendant, may testify when.....	2195
paying money into clerk's office.....	1471
cross-index of appointment of.....	1661 (18)
executor competent witness to will.....	3377
Exemptions, what property exempt from sale under execution....	1142
sheriff to summon appraisers.....	1144
duty of appraisers.....	1145
appraisers to make return.....	1146
levy to be made on excess.....	1149
no election; appraisers to elect.....	1150
personal property appraised; return.....	1152
oath and fees of appraisers.....	1153
non-contiguous tracts embraced in homestead.....	1151
may be set off on petition.....	1161
assessors to set apart personal property and make return to register	1154
register to endorse date and record.....	1155, 1160
person dying without homestead set apart.....	1164
who may have homestead assigned.....	1164
how petition filed and advertisement made.....	1162
liability of officer making levy neglecting to lay off.....	1165
officer, appraiser, etc., conspiring with debtor.....	1147
officer, appraiser, etc., conspiring with creditor.....	1147
exceptions to valuation and allotment when increase demanded, procedure	1157
objection to allotment made on petition.....	1163
undertaking of objector.....	1158
appraisal or assessment set aside for what.....	1159
conveyed homestead not exempt.....	1143
return to be registered.....	1160, 1155
re-allotment, how made.....	1148
exhibition of account compelled.....	60
Expiration of Term of court during trial.....	209
Factory, employment of children in.....	306 to 309
injuring dams, races, etc., of....	633
Fairs, fraudulently entering horse at.....	376
violation of rules of.....	376
disorderly persons seeking to enter.....	624

(See also Index to Forms.)

(References are to sections.)

	Section
False judgments, selling	371
False lights on the sea coast	377
False Pretense, definition and punishment	379
obtaining signatures by means of.....	380
obtaining advances upon	381
obtaining goods on promise to work.....	378
obtaining certificate of registration of cattle.....	251
False Returns of school committee	807
Feeding stuffs, manufacture and sale of concentrated commercial	776, 777, 797
Fees not demandable in advance in criminal actions	1931
fee-bill to be kept posted by clerk.....	Revisal 2774
See "Official Fee Bill".....	page 810
Fee-simple, deeds construed to be in	1693
devises construed to be in.....	3396
Felony, commission of, may be prevented by breaking open houses,	
etc	115 to 118
defined	234
punishment for, where not specified.....	235
Fence, common, unlawful to remove	358
wire, unlawful to cut.....	359
common fence	358
wire; destroying or injuring.....	359
stock running at large in stock law territory.....	262
same, stock impounded.....	252 to 255
penalty for injuring fences or leaving open gates.....	357
fence built around stock-law territory.....	357
turning stock loose beyond stock-law territory.....	265
driving or riding stock on another's land.....	263
driving or riding horse or mule over another's land.....	264
Fences and Stock Law.	
Lawful fences.	
fences to be five feet high.....	2223
four and one-half feet in certain counties.....	2224
four feet in certain counties.....	2225
water-courses, on application to commissioners, made....	2226
Joint fences.	
jointly maintained.....	2227
jointly paid for, when.....	2228
value of dividing fence ascertained, how.....	2229
jurors to report how fence kept up.....	2230
report registered by register of deeds.....	2231
final judgment binding	2232
remedy against delinquent owner.....	2233
how removed	2234
Stock law.	
county elections	2235
township elections	2235
district elections	2237
persons with (in) territory allowed to withdraw.....	2238
elections, how held.....	2239
powers and duties of commissioners.....	2240
land adjoining stock law territory.....	2241
stock not to run at large, impounded.....	2242
owner notified; sale of stock; application of proceeds....	2243

(See also Index to Forms.)

(References are to sections.)

Fences and Stock Law (continued).	Section
Stock law (continued).	
stock defined	2244
impounded stock may be fed; pay for same.....	2245
fence built around territory.....	2246
lawful fence in stock-law territory.....	2247
fence built by assessment on land owners.....	2248
land condemned	2249
Ferries. See "Roads."	
Finance committee, of county. See "County Revenue."	
Fines, to be paid over promptly.....	534, 549
embezzlement of	549
paid by clerk, etc., to treasurer.....	2056
appropriated to common schools.....	2056
itemized statement of, kept by clerks and justices.....	2055
certified statement of, filed by county treasurer.....	2055
Fire Companies, members of, exempt from jury duty.....	2549
Fires, incendiary, hindering investigation of.....	285, 286
camp, wagons not extinguishing.....	290
Fish. See "Hunting" "Crimes."	
unlawful for non-residents to catch for market without license	362
seining for on Sunday.....	812
poisoning	363
Fisheries, injuring structure erected for fishing purposes.....	360, 361
Food, adulteration of.....	393
Forcible Entry and Detainer.....	625
Forfeiture of office by justice by removal.....	7
Forgery, punishment for.....	365
issuing counterfeit stock.....	367
selling false judgments.....	371
in petitions and other papers.....	372
counterfeiting and passing counterfeit coins.....	368
having instruments for counterfeiting.....	369
connecting parts of bank notes.....	366
counterfeiting trade-marks..... See "Trade-marks." 822,	825
selling goods having counterfeit trade-marks.....	821
fraudulent use of brands.....	822
Form, process before justice not quashed for want of.....	58, 194
Fornication and adultery, punishment for.....	294
Fraud, by certain public officers in contracts.....	527
in contract, etc., allows arrest.....	1183
when deed is invalidated by.....	1707
conveyances to defraud creditors, void.....	1707
conveyances to defraud purchasers, void.....	1708
indebtednes merely evidence of fraud.....	1709
bona fide conveyances for good consideration, valid.....	1712
bona fide purchase without notice of illegal consideration.....	1713
relief of purchasers of estates fraudulently conveyed.....	1714
executors, etc., charged personally only by writing.....	1722
agreement to pay another debt, to be written.....	1722
sale of stock of merchandise in bulk.....	1710
marriage settlements void as to existing creditors.....	1711
criminal frauds, see "Crimes".....	374 to 385

(See also Index to Forms.)

(References are to sections.)

Fraud (continued).	Section
contracts with Cherokee Indians.....	1723
contracts for sale of land to be in writing.....	1724
liquor bill for more than \$10 to be in writing.....	1725
statute of frauds.....	1722 to 1726
Fraudulent assignments. (See "Assignments." See "Conveyances.").....	1715 to 1721
Fraudulent Conveyances. (See "Fraud." See Conveyances.)	
Fraudulently entering horse at fairs.	376
Free-trader. (See "Married Woman.")	
Fugitives from justice, who may arrest them.	122
proceedings after arrest of.....	122 to 123
governor may offer reward for.....	127
may be outlawed.....	122
Futures, dealing in, prohibited.	792 to 795
contracts void.....	2252 to 2254
Gambling, futures, dealing in, prohibited.	792 to 795
keepers of taverns, allowing	671
games of chance.....	670
betting at cards in tavern, etc.....	671
faro-banks and tables.....	672
gaming tables other than faro.....	673
person allowing gaming tables on his premises.....	671, 674
lotteries prohibited	680
lottery tickets, sale of, prohibited.....	682
lotteries, advertisement of, prohibited.....	681
justices of the peace and other officers directed to destroy gaming tables	675
witnesses may be summoned and examined concerning gaming tables	676
money bet may be seized.....	677
persons opposing destruction of gaming tables, etc.....	678
betting on elections.....	330
betting contracts void.....	2250 to 2254
Game. (See "Hunting.")	
exporting quail and destroying eggs.....	420, 422
Gaming, persons participating in unlawful, compelled to testify. ...	2251, 676, 2200
Gaming Contracts.	
gaming and betting contracts void.....	2250
players and betters competent witnesses.....	2251
certain contracts for future delivery void.....	2252
procedure and evidence under preceding section.....	2253
invalidity pleaded shifts burden of proof; plea and proof not used in criminal action.....	2254
Gas meters, and other fixtures, tampering with.	621
Ginseng, digging.	669
Graves, opening and robbing.	627
Graveyards, injury to private.	636
Guardian ad litem, appointment of.	896
to file answer.....	896, 897
Guardians.	
Public guardians.	
how appointed; tenure.....	2255

(See also Index to Forms.)

(References are to sections.)

Guardians (continued).	Section
Public guardians (continued).	
oath of office.....	2256
when letters issued to.....	2257
powers, duties, liabilities, compensation.....	2258
Appointed by parent.	
father and if dead, mother may appoint.....	2259
effect of such appointment.....	2259
powers and liabilities of other guardians.....	2261
mother natural guardian, father dead.....	2262
may appoint, for infants, idiots, lunatics, and inebriates...	2263
may commit custody to one, estate to another.....	2264
may allow yearly sum for support and education.....	2265
what disbursements and commissions allowed.....	2266
appointed by, in case of divorce.....	2267
may appoint father if alive.....	2268
proceedings on application for.....	2269
must issue letters.....	2270
removed when	2271
interlocutory orders pending controversy.....	2272
resignation of; must first account.....	2273
Bonds.	
not to receive property till approved.....	2274
given before letters issued; increased if property sold...	2275
recorded in clerk's office; injured person may sue on.....	2276
one bond where wards have common property.....	2277
renewed every three years.....	2278
duty of clerk on failing to renew.....	2279
sureties relieved	2280
liability of clerk for taking insufficient.....	2281
liability of clerk for other defaults.....	2282
Powers and duties.	
must take charge of estate.....	2283
must sell perishable goods on order of clerk.....	2284
sales and rentings, how made.....	2285
may lease lands, when.....	2286
when timber may be sold.....	2287
plate and jewelry to be kept.....	2288
funds invested by fiduciaries.....	2289
deposit of trust funds, at fiduciary's risk.....	2290
executor of deceased, pays money to clerk.....	2291
when liable for debts.....	2292
liable for land sold for taxes.....	2293
liable for costs, when.....	2294
Estates sold.	
by special proceeding; approved by judge.....	2295
property and fund held on same trusts.....	2296
sold to pay ward's debts.....	2297
proceeds assets for creditors; reached as against execu- tors	2298
Returns and accounting.	
first within three months.....	2299
compelled by attachment.....	2300
to be made of new assets.....	2301
annual accounts	2302
compelled by attachment and removal.....	2303
final account	2304
allowed reasonable disbursements and expenses.....	2305
commissions	2306

(See also Index to Forms.)

(References are to sections.)

Guardians (continued).	Section
Estate protected when no guardian.	
duty of grand jury relating to orphans; clerks to furnish	
it list of guardians.....	2307
solicitor to apply for receiver, when.....	2308
action brought by solicitor.....	2309
receiver appointed	2310
property obtained from receiver.....	2311
solicitor shall prosecute action.....	2312
Foreign guardians.	
may have ward's estate removed.....	2313
what petition must show.....	2314
who may be made defendants.....	2315
Habeas Corpus.	
Generally.	
cause of restraint of liberty enquired into.....	2316
habeas corpus shall not be suspended.....	2317
The application.	
who may prosecute writ.....	2318
when denied	2319
by whom made.....	2320
how and to whom.....	2321
what it must state.....	2322
when issued without.....	2323
The writ.	
when granted	2324
penalty for refusal to grant.....	2325
when sufficient	2326
The return.	
when returnable	2327
what to contain; when verified.....	2328
body produced, when.....	2329
served how and by whom.....	2330
Obedience compelled.	
attachment for failure to obey.....	2331
penalty, judge refusing attachment.....	2332
sheriff attached, writ to coroner; penalty.....	2333
precept to bring up party detained.....	2334
penalty, judge refusing to grant precept.....	2335
penalty, judge conniving at insufficient return.....	2336
power of county to aid service.....	2337
obedience to order of discharge, compelled.....	2338
not liable civilly for obedience.....	2339
Proceedings and judgment.	
notice to interested parties.....	2340
notice to solicitor.....	2341
witness subpoenaed	2342
facts examined into; proofs heard summarily.....	2343
party discharged, when.....	2344
party remanded, when.....	2345
party bailed or remanded, when.....	2346
party in execution not to be discharged on habeas corpus.	2347
determined in absence of party, when.....	2348
penalty for committing for same cause.....	2349
Custody of children.	
awarded by judge; modification of order.....	2350
appeal to supreme court.....	2351

(See also Index to Forms.)

(References are to sections.)

Habeas Corpus (continued).	Section
Ad testificandum.	
courts of record may issue.....	2352
issued by justices and clerks, when.....	2353
application, what to contain.....	2354
how and by whom served.....	2355
applicant to pay expenses and give bond.....	2356
duty of officer; penalty.....	2357
prisoner remanded.....	2358
Hangings , to be in private.....	228, 229
Health.	
Auxiliary board of health.	
who composes auxiliary board of health.....	2359
how elected; duties; compensation; elect county superin- tendent	2370
County superintendent of health.	
duties of county superintendent.....	2361
compensation of county superintendent.....	2362
reports monthly statistics; penalty for failure.....	2363
notified of existence of certain diseases; notifies state board	2364
keeps record of disease; notifies schools.....	2365
nuisances abated under supervision of.....	2366
General provisions.	
vaccination	2367
householders to disinfect.....	2368
children kept from school, when.....	2369
towns and cities may make rules to protect.....	2370
county commissioners may levy special tax to protect, when	2371
contingent fund	2372
annual appropriation	2373
powers of local boards not affected.....	2374
bodies of persons dying of certain diseases, how trans- ported	2375
police officers of towns to provide against contagious dis- eases	2376
lots drained; penalty for neglect	2377
nuisances in seaport towns, what are.....	2378
license of pharmacists displayed.....	2379
person not licensed using title of pharmacist.....	2380
not to sell drugs without license.....	2381
sellers responsible for quality of drugs.....	2382
poison, sale of, regulated.....	2383
prescriptions preserved; copies furnished.....	2384
offenses against the public health.....	389 to 407
Heirs , of living person construed children.....	2146
Highways , overseer neglecting his duty.....	753
supervisors failing to perform duty.....	738
Hinsdale Act	1026
Hog-cholera , prevention of.....	240, 241
Holidays , what are public.....	3159
date falling on.....	3160
Homestead. See "Exemptions."	
Homicide. See "Murder" and "Manslaughter."	
House , may be broken open to prevent felony.....	117
may be broken open by officers when.....	118
wrongful occupancy of	640
injury to	628, 641

(See also Index to Forms.)

(References are to sections.)

	Section
House of Correction. See "Work-houses".....	216a, 2038 to 2053
Hunting. See "Game."	
for deer by fire-light.....	411
on Sunday	408
on land of another.....	430, 431
deer during certain months.....	416
between sunset and daylight.....	408
deer with dogs in certain counties.....	409
in Currituck sound.....	410
deer in Brunswick.....	412
deer in McDowell.....	413
bird-nests, etc., protected.....	414
in New Hanover.....	415
for certain birds within certain dates.....	416
wild fowl on Sunday.....	408
musk-rats or minks.....	417
quail, netting, in certain counties.....	418
by non-residents without license shipments of birds and game	420 to 422
wild fowl in Carteret county.....	423
wild fowl in Currituck county.....	424
wild fowl in Dare county.....	425, 426
wild fowl in New Hanover and Brunswick counties.....	427
wild fowl in Hyde county.....	428
wild fowl with fire.....	429
Audubon society.	
incorporated	2385
officers of	2386
objects for which created.....	2387
hunters' license; form of, prescribed by.....	2388
grants certificates to take birds or eggs.....	2389
governor appoints treasurer of society and game warden.	2390
Game wardens.	
oath of; bond; badge; act as constables.....	2381
powers	2392
birds seized by, sold.....	2393
Bird and game fund.	
how paid out.....	2394
Non-resident hunters.	
procure license, effect of.....	2395
may take quail out of state.....	2396
license issued by clerk.....	2397
Game birds.	
what are	2398
birds kept as pets, or for breeding.....	2399
license tax on clubhouses, Dare county.....	2400
non-residents shooting from blinds or batteries in Dare county south of Roanoke island.....	2401
license tax on non-residents in Dare county.....	2402
license taxes for hunting wild fowl in Dare county.....	2403
Close season.	
deer	2404
squirrel	2405
opossum	2406
quail or partridges.....	2407
wild turkey	2408
dove, robin or lark	2409

(See also Index to Forms.)

(References are to sections.)

Hunting (continued).	Section
Close season (continued).	
pheasant	2410
woodcock	2411
snipe and other game or shore birds.....	2412
Husband and wife. See "Marriage," "Conveyances," "Married Women."	
as witnesses	2199
probate of	1699 to 1706
power of attorney by.....	1704
deeds by.	1699 to 1706
husband to administer on wife's estate.....	1329
action against wife, husband to be a party.....	898
intercourse with wife by impersonating husband.....	579
Idiots, Inebriates and Lunatics.	
Guardian of.	
inquisition; guardian appointed.....	2413
guardian appointed on certificate from hospital for insane	2414
inebriate defined	2415
reformation and restoration to sanity or sobriety.....	2416
estates without guardian managed by clerk.....	2417
allowance to abandoned feme covert lunatic.....	2418
Sales of estates.	
clerk may order sale or renting.....	2419
how and for what purpose sold; parties; disposition of	
proceeds	2420
land of wife of lunatic, how sold.....	2421
Surplus income.	
of mother used for children's support.....	2422
when advanced to next of kin.....	2423
for what purpose and to whom advanced.....	2424
distributees, parties	2425
advancements, equal; accounted for. when.....	2426
clerk may select those to advance.....	2427
secured against waste.....	2428
appeal; removal to superior court.....	2429
advancements only when insanity permanent.....	2430
decree suspended when sane.....	2431
Admission to asylums.	
idiots not admitted to hospitals for insane.....	2432
priority given to indigent when private nurses provided..	2433
settlement of patient; how determined.....	2434
affidavit of insanity made to procure.....	2435
affidavit made; clerk issues order to bring party up for ex-	
amination	2436
clerk causes examination to be made; who makes.....	2437
clerk discharges, when; commits to hospital, when; bond	
for safe keeping of insane party.....	2438
clerk examines party at home, when.....	2439
justice of the peace acts, when; procedure.....	2440
fees of physician for examination.....	2441
persons becoming suddenly violently insane; who may	
commit	2442
county of settlement pays expense of commitment of per-	
son; penalty	2443
citizen of another state adjudged insane; procedure.....	2444
alien resident adjudged insane; procedure.....	2445
clerk to keep record; what to record; fees.....	2446
none but bona fide residents admitted to hospitals.....	2447

(See also Index to Forms.)

(References are to sections.)

Idiots, Imbeciles and Lunatics (continued).	Section
Admission to asylums (continued).	
in examinations findings as to residences made and reported to superintendents.....	2448
questions answered upon examination; certified to superintendent	2449
superintendent in doubt as to; procedure.....	2450
patient exposed to disease. superintendent may refuse to receive	2451
patient released on bond; terms not complied with, patient returned	2452
upon patient's own application.	
insane person committed to jail, when.....	2454
Discharge from asylums.	
county commissioners may discharge insane person, when	2455
who may discharge from hospital; sheriff to come for discharged patient; expense, how paid.....	2456
superintendent to discharge temporarily, when.....	2457
bonds for safe keeping of insane; penalty; condition.....	2458
form of bond for safe keeping of insane.....	2459
Private asylums.	
may be established; license obtained; reports to be made under control of the board of charities.....	2460
counties and towns may establish.....	2461
part of system of public charities.....	2462
insane person placed in private hospital, when.....	2463
justice of the peace to report to clerk.....	2464
clerk to report proceedings to judge.....	2465
proceedings authorize persons being sent to private hospitals	2466
how patients transferred from public hospitals to, on petition	2467
executive committee of state hospital may order transfer made	2468
guardian appointed for inmate of, when.....	2469
guardian of insane person to pay expenses out of estate; support of inmates of private hospitals.....	2470
fees and charges for examinations.....	2471
Asylums for dangerous insane.	
criminals adjudged to be insane, committed to.....	2472
persons acquitted of certain crimes upon ground of insane confined in.....	2473
persons becoming insane in prison confined in.....	2474
person acquitted of capital felony upon ground of insanity; how discharged	2475
persons confined in; recovery; procedure.....	2476
Illegitimate children , next of kin to mother.....	2120 (9)
legitimate as between themselves.....	2120 (10)
Impersonation of husband , intercourse by means of.....	579
Impounded stock . See "Fence," "Cattle," "Cruelty to Animals."	
Improvements , defendant's claim for, made before execution	1109 to 1123
Incest , punishment for.....	295, 296
Indictment , necessary to put person on trial.....	180
within what time to be found.....	88
not quashed when.....	194, 195, 196
for perjury, sufficiency of.....	186
for perjury, form of.....	187

(See also Index to Forms.)

(References are to sections.)

Indictment (continued).	Section
for subornation of perjury.....	188
to state former conviction where greater punishment for second offense	189
ownership of property in common, how alleged.....	190
form of, where joint property.....	190
for embezzlement, sufficiency of.....	192
for murder and manslaughter.....	185
certain defects of, not to vitiate	194, 195, 196
for larceny of money, sufficiency of.....	191
how to allege intent to defraud.....	193
for one crime, conviction of lesser degree.....	212
how returned by grand jury.....	182
to set forth substance of proceedings.....	183
bill of particulars with reference to.....	184
waiver of, not allowed in certain cases.....	197
Inebriates. See "Idiots, Lunatics, etc."	
Infamous persons, restored to rights of citizenship, how...	3074 to 3079
Infants. See "Children," and "Minors," and "Guardian and Ward."	
to sue by guardian or next friend.....	895
to defend by guardian ad litem.....	896
guardian ad litem for, to file answer.....	897
petitioners in ex parte special proceedings, orders signed by judge.....	1176
costs against, when plaintiffs.....	1953
endorsing notes, etc.....	2750
when trustees, to convey, how.....	1786
money paid by clerk to person having charge of.....	1670
habeas corpus for custody of.....	2350
Injunction, temporary, issued when.....	1259
solvent defendant restrained from cutting trees.....	1260
timber lands, trial of title to.....	1261
when timber may be cut.....	1262
time of issuing.....	1263
copy of affidavit served.....	1263
not for more than twenty days without notice.....	1264
continues until dissolved.....	1264
issued after answer only on notice.....	1265
order to show cause; restraint in meantime.....	1266
what judges have jurisdiction.....	1267
before what judge returnable.....	1268
stipulation as to judge to hear.....	1269
undertaking.....	1270
damages	1271
issued without notice, vacated when.....	1272
verified answer an affidavit.....	1272
opposing affidavits	1273
when granted to restrain collection of taxes.....	1274
Inn-keepers, must furnish accommodations.....	2477
liability for loss of baggage	2478
safe-keeping of valuables.....	2479
loss by fire	2480
copies of this chapter posted.....	2481
negligence of guest.....	2482
lien of.....	2605 to 2607
Inquest. See "Coroner."	

(See also Index to Forms.)

(References are to sections.)

Insane. See "Idiots, Lunatics, etc."	Section
presumed to have made all pleas.....	850
Insolvent debtors,	
Criminal actions.	
who may be discharged from prison.....	2483
when petition filed, on whom served.....	2484
warrant issued for prisoner.....	2485
proceeding on application.....	2486
oath to be taken.....	2487
who may suggest fraud.....	2488
Civil actions—under arrest.	
who entitled	2489
when petition may be filed.....	2490
the petition; verification	2491
what notice given, and to whom.....	2492
who may suggest fraud.....	2493
when no fraud suggested, debtor discharged.....	2494
cause continued, when.....	2495
issue of fraud, how debtor discharged.....	2496
fraud found; imprisoned, how.....	2497
effect of order of discharge.....	2498
Civil actions—not under arrest.	
may file petition; what to contain; how verified.....	2499
duty of clerk on receiving petition.....	2500
discharged, when	2501
order of discharge, terms and effect.....	2502
creditor may suggest fraud.....	2503
General provisions.	
issue of fraud made up, cause docketed for trial.....	2504
debtor may give bond.....	2505
surety may surrender principal.....	2506
when creditor liable for jail fees.....	2507
persons removing debtors to defraud creditors, liable	
debtor	2508
false swearing; penalty	2509
general power of trustees.....	2510
who may take jail bounds.....	2511
Under sentence.	
confined in jail or penitentiary, who may apply for trustee	2512
to whom application made when trustee appointed.....	2513
duty of trustee	2514
trustee to make returns.....	2515
oath of trustee.....	2516
may appoint several trustees.....	2517
court may remove trustee and appoint successor.....	2518
Inspection of writings	2219
Instructions of judge to be in writing	1024
written, may be taken to jury-room.....	1024a
prayers for special, in writing.....	1025
Insurance, offences against law of	432 to 449
Intent to defraud, allegation and proof	193
Interest, when allowed in judgments and how ascertained	2524
notes to guardian to bear compound.....	2522
rate of, six per cent.....	2519
penalty for usury; corporate bonds sold below par.....	2520
time from which it runs.....	2521

(See also Index to Forms.)

(References are to sections.)

Interest (continued).	Section
guardian notes bear compound.....	2522
contracts, except penal bonds and judgments to bear; jury to distinguish principal from.....	2523
after verdict or report, computed by clerk.....	2524
judgment by default final, clerk ascertains.....	2525
Interpleader , allowed....	904, 1256, 1245
Intimidation of voter	333
of jurors and witnesses.....	651
Islands , artificial	498
Issues defined	1031
of law	1032
of fact	1033
of law tried first.....	1034
when and by whom made up.....	1035
in concise and direct terms.....	1036
how tried	1015
of fact when tried.....	1016
raised before clerk	1017
feigned, abolished	846
Jailers . See "Jails."	
malfeasance of, to prisoners.....	615, 616
Jails . "See "County Prisons."	
prisoners committed to what.....	171
grand juries to visit.....	2541
Joinder of causes of action , what causes may be joined.....	959, 966
Judge , to sign certain orders in special proceedings.....	1176, 1178
to express no opinion on facts.....	1023
to put charge in writing.....	1024
what, to approve orders, etc.....	1176, 1058
not present, court adjourned.....	2098
Judgment , selling false.....	371
of justice may be docketed in superior court.....	70
execution on justice's.....	72
stay of execution on justice's.....	74 to 76
former, is evidence of debt.....	68
of justice, removed to another county.....	71
of justice; appeal from.....	80 to 86
of magistrate against non-resident of his county.....	42
offer of, in magistrate's court.....	62
offer of, in superior court.....	1290 to 1294
of restitution where money collected on judgment after- wards reversed	86
certain defendants served with summons after	946
form of, in action for purchase-money of land.....	1084
how to be pleaded	987
defined	1042
by default of plaintiff.....	1045
by default final.....	1043
by default and enquiry.....	1044
by default not allowed before justice.....	55
on frivolous demurrer, answer or reply.....	1047
against infants in certain cases validated.....	1177
in justice's courts.....	70, 1049
when defendant files no undertaking.....	1043
giving defendant affirmative relief, when.....	1045, 1050

(See also Index to Forms.)

(References are to sections.)

Judgment (continued).	Section
may be for or against any parties.....	1050
may dismiss complaint for non-prosecution.....	1050
against married woman.....	1050
relief granted not to exceed prayer.....	1052
in certain cases to be a conveyance of title.....	1053
regarded as deed and registered, when.....	1054
copy of, from register's office, evidence.....	1056
registered, how	1055
in action for recovery of personal property.....	1057
approved by what judge.....	1058
docketed and indexed.....	1060, 1061
judgment roll	1059
lien of, on real property.....	73
secured on appeal.....	1078
suit on, evidence.....	68
lien of justice's.....	73
rendered in vacation, when.....	1046
of supreme court docketed in superior court.....	1062
defense after, where summons served by publication.....	939
costs to be inserted in.....	1932, 1934
of Federal courts docketed in superior court.....	1063
credits on, proceedings for entering.....	1066
money paid on, without execution.....	1064, 1065
dormant when	1077
enforcement of, when not for money.....	1072
against officer failing to return execution.....	3139
confession of, without action.....	1068 to 1070
giving surety for costs does not discharge criminal.....	1970
for proceeds of judicial sale.....	2112
variance between, and execution.....	1085
against executors etc.....	1448 to 1451
taken by mistake, surprise, or excusable neglect, relief against.	1001
stands until reversed	1048
how entered when party dies after verdict.....	1051
clerk's entries when docketed judgment of magistrate is reversed, modified or affirmed on appeal.....	1067
Judicial sale. See "Sale."	
Jurisdiction of justices of peace (general).....	1
of justices of peace (criminal).....	87
of justices of peace (civil).....	29
of justices in case of torts.....	29 page 6
of superior court.....	2089 to 2098
of clerk on procedure.....	847
acquired by service of summons.....	935
Jurors. See "Jury."	
challenges in criminal cases.....	205 to 207
accepting bribes	652
bribing	652
intimidation of	651
in justice's court.....	14 to 28
How selected.	
list made by county commissioners.....	2526
names put in boxes.....	2527
drawn from box, how.....	2528
jurors with suit pending.....	2529

(See also Index to Forms.)

(References are to sections.)

Jurors (continued).	Section
How selected (continued).	
when disqualified persons are drawn.....	2530
how drawing to continue.....	2531
when commissioners fail to draw jury.....	2532
Petit jurors and talesmen.	
peremptory challenges	2533
peremptory challenges apportioned between defendants..	2534
sworn; judge decides competency.....	2535
tales jurors summoned; qualifications.....	2536
judge to appoint one to summon tales jurors, sheriff inter- ested	2537
Grand jurors.	
how drawn	2538
exceptions to, when taken.....	2539
foreman may administer oaths.....	2540
must visit jail and county home.....	2541
Special venire.	
ordered; summoned	2542
drawn from box, when.....	2543
penalty on sheriff not executing; on jurors not attending.	2544
General provisions.	
summoned and must attend until discharged.....	2545
penalty for non-attendance, regular and tales.....	2546
furnished with accommodations.....	2547
exempt from civil arrest.....	2548
exemptions from jury duty.....	2549
clerk to keep record of jurors.....	2550
Jury. See "Jurors" and "Verdict" and "Trial."	
allowed in justice's court.....	14 to 28
to pass on what.....	1037 to 1040, 200
grand, coming into court.....	182
rules for trial by in justice's court.....	14 to 28
trial by in superior court.....	1014 to 1041
trial by before justice.....	14 to 28, 199, 200
trial by, how waived.....	16, 1027
how drawn	18
to be sworn.....	2535
to assess damages in certain cases.....	1040
general and special verdicts.....	1037
of coroner. (See "Coroner.")	
tax for in superior court.....	1930
officer attending, sworn.....	2115
Justices of the Peace , jurisdiction of.....	1, 87
vacancies in office of	2
election of	4, 5
when to qualify.....	6
qualification of, when.....	6
removal to forfeit office.....	7
forfeiture of office, removing.....	7
resignation of	8
issue process where.....	34
try causes where.....	34
office under United States.....	10
punishment on conviction of crime.....	9
convicted of crime, punishment.....	9
filing docket with clerk.....	12
delivering docket to successor.....	13

(See also Index to Forms.)

(References are to sections.)

Justices of the peace (continued).	Section
delivery of docket, how enforced.....	533
filing of docket, how enforced.....	533
dockets to be furnished to.....	11
finer, to be paid over by.....	534, 549, 2056
finer to keep itemized statement of.....	2055
jury trial before.....	14 to 28
process, criminal, to be issued by.....	98
process, criminal, may be issued by.....	97
duty of, to issue process.....	98
warrant of, where to run.....	99
warrant of, to be endorsed.....	100, 101
bail granted by.....	147 to 150
bail granted, duty of.....	152
warrant to be returned before what.....	102
removal of actions from.....	46, 47
may associate another.....	95
to examine evidence against prisoner.....	131, 132
to examine prisoner.....	133
to caution prisoner before examining.....	133
to write down prisoner's evidence.....	135
to hear prisoner's evidence.....	136
to allow prisoner counsel.....	131, 132
not to take prisoner's evidence in presence of witnesses..	134
may separate witnesses.....	134
to write down witness's evidence.....	132
not required to examine prisoner in misdemeanor.....	137
to discharge prisoner when.....	139
to bind over prisoner when.....	142
to bind over witnesses.....	143
to require bonds of witnesses when.....	144
may commit witnesses failing to give bond.....	172
to certify examinations and recognizances.....	145
penalty against, for failure to make required return.....	146
to dispose of case in jurisdiction.....	198
to allow prisoner or complainant a jury.....	199
to submit what to jury.....	200
appeal by prisoner from sentence of.....	217
to transmit papers to superior court.....	203, 218
to furnish copy of warrant, etc., on payment of fees.....	202
findings and sentence of, bars another indictment.....	202
to adjudge costs.....	1984
to enforce payment of costs.....	1985
to make returns of all criminal actions.....	203
to allow bail when.....	147
power to allow bail.....	149, 150
to allow bail on continuance.....	153
granting bail, duty of.....	152
not to quash process for want of form.....	58
may allow amendments.....	59
may outlaw fleeing felon.....	122
not allowed to practice as attorneys.....	596
civil jurisdiction of.....	29
issue summons.....	36, 39 to 41
service of summons of.....	37, 39
to dismiss action where claim exceeds jurisdiction.....	30
to dismiss action involving title to real estate.....	31
jurisdiction in torts.....	29, page 6

(See also Index to Forms.)

(References are to sections.)

Justices of the peace (continued).	Section
action in court of, for damages to real estate.....	67
to furnish itemized bill of costs.....	543
docketing judgment of.....	70
execution issued by.....	72
stay of execution by.....	74
former judgment evidence in trial by.....	68
rehearing of an action by.....	69
removal of judgments to another county.....	71
witnesses in courts of.....	43, 44, 45
issuing process to other counties.....	40, 45
pleadings in court of.....	48 to 59
may require parties to exhibit accounts.....	60
may allow amendments.....	59
code of civil procedure applicable to courts of.....	64 to 66
offer of judgment in courts of.....	62
may grant continuances.....	63
jury trial, rules of.....	14 to 28
appeal from judgment of.....	80 to 86
return to notice of appeal.....	84, 85
may stay execution on judgments.....	74 to 76
profanity before. (See Appendix to this volume.)	
to insert bill of costs in criminal judgment.....	1934
taking probates. See "Conveyances."	
judgments of, against non-residents of justice's county...	42
death or incapacity of; removal of action.....	47
not to give judgment by default.....	55
delivery of account, etc., to.....	56
to record proceedings on docket.....	61
judgment, tender of, before.....	62
lien of judgment of.....	73
search warrants.....	103, 104
peace warrants.....	105, 113
Land , contracts for sale, etc., to be in writing.....	1724
contracts for lease of, to be in writing.....	1724
right of aliens to hold.....	1508, 1509
Landlord and Tenant.	
The relation.	
lessors and lessees, not partners.....	2551
forfeiture without demand for rent, when.....	2552
length of notice to quit.....	2553
agreement to repair, how construed.....	2554
The lessor.	
recovers for use, when.....	2555
rent apportioned, estate terminated.....	2556
rents and charges apportioned to successive owners.....	2557
grantees of reversion, same rights and liabilities as grantors.....	2558
The lessee.	
holds to end of farming year.....	2559
not liable for accidental damage.....	2560
may surrender, building destroyed or damaged.....	2561
Agricultural tenancies.	
landlord's lien, crop vested in, to secure, how enforced....	2562
rights of tenant.....	2563
action on the contract; tenant's undertaking.....	2564
crops delivered to landlord; undertaking.....	2565
if neither gives undertaking; crops sold.....	2566

(See also Index to Forms.)

(References are to sections.)

Landlord and tenant (continued).

Agricultural tenancies (continued).	Section
tenant's crop not subject to execution against landlord...	2567
turpentine and lightwood leases.....	2568
mining and timber land leases.....	2569
Summary ejectment.	
tenant dispossessed. when.....	2570
summons issues by justice on verified complaint.....	2571
service of summons.....	2572
judgment by default or confession.....	2573
trial by justice; jury trial; judgment; execution.....	2574
damages assessed to time of trial.....	2575
rent and cost by tenant.....	2576
appeal; undertaking on; increase of.....	2577
restitution. when	2578
damages to tenant for wrongful removal.....	2779
removal of crop by lessee a misdemeanor, when.....	620
landlord seizing crop when nothing due.....	619
surrendering possession to any but landlord a misdemeanor	637
tenant injuring real property; misdemeanor.....	641
abandonment of premises by tenant.....	311, 312
laborer's share of crop not liable to execution.....	2567
violation of contract by landlord or tenant.....	311, 312

Landmarks, removing 629**Larceny, of money, sufficiency of indictment for** 191

bill charging, may also charge receiving.....	193
restitution of stolen goods.....	94
of bank notes.....	450
by servant	451
of horses	457
of horse for temporary use.....	461
pursuing or injuring horses, etc.....	456
of growing corn, etc.....	455
of wood, etc., growing or being on land.....	464
of stranded goods by finders.....	503
of public records.....	460
of wills	463
of public documents	460
of dogs	453
of ginseng	454
by insurance agents	440
of court records	460
temporary use of automobiles, etc.....	462
receiving stolen goods.....	459
distinction between grand and petit abolished.....	452
punishment for	458

Lawyer. See "Attorney."**Leases.** See "Deeds" and "Landlord and Tenant."

certain to be registered	1724
certain to be in writing	1724

Legitimation of illegitimate children..... 1560, 1561**Letters, opening, reading, etc.**..... 683**Lewd women and college students**..... 297**Libel, indictment for**..... 590

truth may be proven in criminal case.....	210
defense against charge of.....	210

(See also Index to Forms.)

(References are to sections.)

	Section
Libel and slander, notice to newspaper before action.....	2580
good faith and correction, actual damages recovered;	
nominal fine	2581
anonymous communications	2582
slander of women	2583
License, practicing dentistry without.....	597
practicing medicine without	600
practicing pharmacy without	605
practicing trade or profession without.. 755, and Revisal	2877
selling liquor without	483
stevedores must have	2618
Liens.	
Labor and materials.	
on buildings and other property.....	2584
personal property repaired	2585
constructing railroad; claims collected; time of action...	2586
Sub-contractors.	
given preferred lien.....	2587
notice to owner; liability of.....	2588
contractor shall furnish owner with statement of indebtedness; sub-contractor may.....	2589
sums due by statement, a lien.....	2590
claims paid pro rata when.....	2591
On colts and calves.	
season of a sire a lien on.....	2592
not exempt from execution.....	2593
Proceedings to enforce.	
claims to file, when.....	2594
action brought, when and where.....	2595
filed in twelve months.....	2596
execution	2597
no justice's execution against land.....	2598
attachment, remedy, when.....	2599
Rights of defendant.	
set-off and counter-claim.....	2600
how liens discharged.....	2601
Priorities.	
laborer's lien on crops.....	2602
date from notice of lien.....	2603
rights not affected	2604
Hotels.	
may retain baggage, when, lien on.....	2606
baggage sold, when.....	2606
notice of sale.....	2607
On vessels.	
for towage	2608
for labor in loading and unloading.....	2609
how filed; notice to master.....	2610
how enforced	2611
judgment against contractor, a judgment against master and vessel	2612
liens not to exceed amount due contractor.....	2613
owner to see laborers paid.....	2614
may refuse settlement with contractor till laborers paid..	2615
owner may pay orders for wages.....	2616
laborers may sue owner, when.....	2617
contractors for loading vessels licensed.....	2618
tax and bind.....	2619

(See also Index to Forms.)

(References are to sections.)

Liens (continued).	Section
Agricultural liens.	
on crops for advances.....	2620
lien created by mortgagors in possession.....	2621
crops seized and sold, when; issue made up for trial.....	2622
short form in certain counties.....	2623
rights on failure to cultivate crops.....	2624
commissioners to furnish blank records.....	2625
of justice's judgment.....	73
no execution by justice against real estate.....	73
laborer's share of crops not liable to execution.....	2567
Limitation of actions, for misdemeanor.....	88
when the state will not sue.....	869, 870
when claimants under state barred.....	871
seven years possession under color of title.....	872
proviso in case of nonsuit, arrest of judgment, etc.....	859
plaintiff must have been seized within twenty years.....	873
twenty years of adverse possession.....	874
action within one year after entry.....	875
possession presumed in owner.....	876
landlord and tenant.....	877
persons under disabilities.....	851, 852, 853
cumulative disabilities.....	853
railroads, canal companies, etc., not barred.....	878
streets, roads, etc.—no title by occupancy.....	879
against railroads.....	884
ten years.....	881
seven years.....	882
six years.....	883
five years.....	884
three years.....	885
two years.....	886
one year.....	887
six months.....	888
where time not specified.....	889
applicable to actions by the State.....	864
on an account current.....	865
when action deemed commenced.....	848
against defendant out of the State.....	855
where person dies.....	856
where aliens are parties.....	855, 868
where nonsuit or judgment reversed or arrested.....	859
where delay is caused by injunction, etc.....	857
time during controversy about probate of will or granting letter of administration.....	858
disabilities must exist when right of action accrues.....	854
when several disabilities.....	853
acknowledgment by partner after dissolution.....	861
acknowledgment by joint obligor after bar of statute.....	861
acknowledgment or new promise to be in writing.....	860
co-tenants; some may be barred and others not.....	863
on bills, etc., circulating as money.....	866
against directors, etc., of banking corporations.....	867
statute of, must be pleaded.....	859
against county, city, or town, two years.....	886
on claim disputed by executor, etc.....	1418
statute runs from time action accrued.....	849
deemed pleaded by insane person.....	850
undisclosed partner.....	862

(See also Index to Forms.)

(References are to sections.)

	Section
Liquors, adulteration of spirituous	465, 466
retailing, without license, etc.....	483
selling to minors	477 to 479
selling, at or near political speaking.....	482
selling, on election days.....	335
selling or giving to inmates of charitable or penal institu- tions	470
selling or giving to inmates of insane hospitals.....	470
selling near religious congregation.....	485
selling on Sunday	487
bill exceeding \$10 for, to be signed, etc.....	1725
manufacture and sale only in incorporated cities, etc.....	475
same, must have license there.....	483
physicians making fraudulent prescription.....	481
druggist selling unlawfully.....	481
wine of own manufacture; not less than one gallon.....	490
same; not to be drunk on premises.....	490
dispensary officer or employe violating rules, etc.....	467
drinking on, or refusing to leave, dispensary premises....	468
druggist failing to keep record of sales.....	469
sale of, in local option territory.....	471
sale of, by druggists	472
dispensary manager and clerks regulated.....	473
dispensary officers receiving gifts.....	474
manufacturing or selling poisonous.....	476
minors excluded from bar-rooms, etc.....	476a
officers negligent, etc., of duties relating to sale of, etc., removed from office	480
sale of, outside of incorporated towns.....	484
selling in towns having dispensaries.....	486
permitting unlawful distilleries on one's land.....	488
sale of, through agent.....	489
unlawful for others than dispensary to sell.....	486
Manufacture.	
place	2626
government and police force; duties.....	2627
license from United States as evidence.....	2628
wine or cider from fruits.....	2629
License.	
necessary	2630
issued to druggists outside of towns.....	2631
application for	2632
hearing, and order for.....	2633
form and issuing	2634
posted in place of business.....	2635
revoked	2636
Local option elections.	
when ordered, what submitted.....	2637
how conducted	2638
boxes provided, what tickets voted.....	2639
distilleries, when allowed.....	2640
saloons, when licensed	2641
Dispensaries.	
when established	2642
commissioners appointed	2643
terms of office fixed; removal; bonds.....	2644
sales in, how made.....	2645

(See also Index to Forms.)

(References are to sections.)

Liquors (continued).	Section
Dispensaries (continued).	
unlawful to sell except in dispensary.....	2646
proceeds disposed of	2647
Special acts.	
not repealed	2648
place of delivery place of sale.....	2649
Lis Pendens , notice of.....	950 to 954
Literary Society , disturbing a meeting of.....	659
Lost paper or pleading , copy may be used	
1616 to 1634, also 2166, 2170 to 2182, 993	
See "Burnt and lost records."	
Lottery. See "Gambling.."	
forbidden	681
sale of tickets forbidden	682
advertisement of, forbidden.....	680
Lunatics. See "Idiots, Lunatics, etc."	
Lynching	653, 654
examination of witnesses and participants, 140 and 141, 653, 654	
investigated	140, 141
venue for trial.....	173
punishment for	653
witnesses must testify.....	654
Magistrate. See Justice of the Peace.	
Maiming	591
Malicious injury to real property.....	632
to personal property	631
Mandamus	1279 to 1281
Manslaughter , indictment for.....	185
punishment for	587
punishment for second offence.....	588
Marl pits , to be enclosed.....	765
Marriage.	
See "Husband and Wife," and "Divorce," and "Married Woman."	
with female under fourteen years of age.....	313
between whites and negroes unlawful.....	314, 315
license for; obtaining for persons under age.....	316
settlement, to be registered.....	1733
settlement, void as to creditors.....	1711
How contracted.	
what constitutes	2650
Contracting parties.	
who may marry.....	2651
who may not marry.....	2652
prohibited degrees of kinship.....	2653
marriages between slaves validated.....	2654
The license.	
unlawful to perform ceremony without.....	2655
penalty for performing ceremony without.....	2656
issued by register of deeds.....	2657
form of license.....	2658
penalty for issuing unlawfully.....	2659
record of, kept by register of deeds; original filed.....	2660
penalty for failure to record license and the return.....	2661

(See also Index to Forms.)

(References are to sections.)

Marriage (continued).	Section
Certain marriages validated.	
performed by licensed but unordained ministers.....	2662
Married Women.	
See "Conveyances," "Marriage," "Husband and Wife," "Evidence."	
Separate estate of.	
secured; disposed of by will; conveyed with husband's written assent	2663
can not contract without husband's consent.....	2664
may draw checks.....	2665
what leases require joinder of husband and privy examination	2666
land of, not sold or leased without their consent; husband's interest exempt from execution.....	2667
may make a will.....	2668
may insure husband's life.....	2669
separate savings; husband's liability for use of.....	2670
liable for ante-nuptial debts.....	2671
Rights and liabilities of husbands.	
tenant by the curtesy, when.....	2672
party to action against wife; may defend.....	2673
discharged from defense, when; pays cost.....	2674
jointly liable for wife's torts.....	2675
not liable for ante-nuptial debts.....	2676
Contracts between husband and wife.	
void without approval of probating officer.....	2677
when valid	2678
Divorce and separation:	
property rights after divorce a vinculo.....	2679
effects of elopement.....	2680
effect of husband living in adultery.....	2681
Free traders.	
how created	2682
dates from registration.....	2683
certified copy evidence.....	2684
how ended; publication.....	2685
living separate from husband; husband idiot or lunatic..	2686
abandoned by husband.....	2687
persons trading without disclosing interest; married woman declared free trader; burden of proof.....	2688
General provisions.	
abduction of	304
elopement with	304
actions by and against.....	898
judgment against	1050
execution against	1074
as witness.....	2198, 2199
may vote her stock in a corporation.....	1862
intercourse with by impersonating husband.....	579
probate of, by whom taken. See "Conveyances."	
probate of, form of certificate. See "Conveyances."	
Master and servant, enticing servant away.....	310
Mayor. See "Towns and Cities."	
Measures. See "Weights and Measures."	
Medicine, practicing, without license.....	600 to 602
Meridian Monuments protected.....	700

(See also Index to Forms.)

(References are to sections.)

	Section
Military companies , unlawful to organize, except, etc.....	493
general regulations relative to.....	491 to 497
Mills , owners of, failing to keep up bridges.....	740
injury to dam, race, etc.....	633
Public.	
what are	2689
grind according to turn; toll taken.....	2690
measures kept, toll by weight.....	2691
Water mills established.	
procedure	2692
commissioners appointed, how.....	2693
what commissioner presides; penalty for failure to per-	
form duty	2694
duty of commissioners.....	2695
report contains what.....	2696
when mill not allowed	2697
power of court on return of report.....	2698
built when; kept up.....	2699
time in which must be rebuilt.....	2700
Dams; backing and conveying water.	
procedure	2701
petition to contain, what.....	2702
commissioners appointed	2703
commissioners; oath and duty.....	2704
damages assessed	2705
when mill not allowed	2706
rights of petitioner	2707
mills not erected when; abatement of nuisance.....	2708
report registered.....	2709
fees of appraisers	2710
Damages.	
for erection of mills; procedure.....	2711
dams, when abated as nuisances.....	2712
judgment binding five years, when.....	2713
judgment binding one year.....	2714
judgment against plaintiff; costs, how paid.....	2715
Ministers of Gospel. See "Marriage."	
exempt from jury service.....	2549
Minors. See "Children" and "Infants" and "Adoption of Minor	
Children."	
enticing away and detaining.....	585
abduction of	589
employment of, in factories.....	306 to 309
acts of lewd women in presence of students who are.....	297
selling or giving liquor to.....	477 to 479
marriage of, under fourteen years.....	313
obtaining marriage license for.....	316
enticing to leave the State.....	585
not allowed to enter or remain in bar-room, billiard-room	
or bowling alley.....	476a, 684
sale of cigarettes to	773, 774
refusing to pay, for their labor.....	375
next friend for	895
guardian ad litem for.....	896
convicted of crime, sent to houses of correction.....	216a
excluded from bar-rooms and billiard rooms, etc.....	476a

(See also Index to Forms.)

(References are to sections.)

	Section
Misdemeanor , defined.....	234
punishment for, where not defined.....	236
Misjoinder , action divided.....	966
Mistake , relief in case of.....	1001
Money in hands of Clerk . See "Clerk."	
Money in hands of Sheriff . See "Sheriff."	
Monuments , removing or defacing.....	635
Mortgage . See "Conveyances."	
give in lieu of bond.....	1562 to 1568
disposing of property under a	382
publication for party in action to foreclose.....	932
registration of	1727
by corporation	1807, 1808
how discharged and cancelled.....	1796
for purchase-money.....	1705
chattel	1790
mortgagor dying; rights to executor, etc.....	1781
description of land in notice of sale under.....	1793
notice of sale to be posted.....	1792, 1098
sale by agent, etc., of mortgagee.....	1785
recorded within what time.....	3057
power of sale under, barred when.....	1794
Mortuary Tables	2189
Motions , how and where made, etc.....	1311
notice of	1314
procuring evidence for use at hearing of.....	1312
to be determined within ten days.....	1313
terms of court for.....	2095
Murder , indictment for.....	186
dueling when death ensues is.....	584
punishment for	586
divided into degrees.....	586
indictment for first degree, conviction for second.....	214
Mute defendant , plea of not guilty for.....	204
Names of persons .	
can not be altered by legislature.....	2716
application to alter before clerk superior court; notice... ..	2717
proof of good character filed.....	2718
change ordered by clerk.....	2719
clerk to issue certificate; record made.....	2720
procedure for changing.....	2716 to 2720
National Guard	491 to 497
Nature , crime against.....	293
Navigation , crimes relating to.....	498 to 519
Neglect , Excusable, relief in case of.....	1001
Negotiable Instruments .	
Requirements for negotiability.	
what to contain	2721
what constitutes a sum certain.....	2722
what promise unconditional.....	2723
additional promise makes non-negotiable; exceptions....	2724
things which do not affect.....	2725
what is a determinable future time.....	2726

(See also Index to Forms.)

(References are to sections.)

Negotiable instruments (continued).	Section
Requirements for negotiability (continued).	
when payable on demand.....	2727
what are payable to order.....	2728
what are payable to bearer.....	2729
no formal language required.....	2730
Date.	
prima facie true.....	2731
incorrect, does not invalidate.....	2732
holder may insert.....	2733
Incomplete.	
blanks may be filled by holder.....	2734
not valid unless delivered.....	2735
revocable until delivery.....	2736
Signature.	
no liability without.....	2737
may be made by agent.....	2738
effect of signing as agent.....	2739
effect of, by procuration.....	2740
forgery of, renders wholly inoperative.....	2741
Consideration.	
valuable, presumed.....	2742
what constitutes value.....	2743
holder deemed holder for value when value given.....	2744
holder of lien, holder for value to extent of lien.....	2745
absence or failure of, as defense.....	2746
accommodation party, who is; liability.....	2747
Endorsement.	
what is negotiation.....	2748
how made.....	2749
effect of, by corporations and infants.....	2750
must be of entire instrument.....	2751
kinds of.....	2752
special, defined; in blank.....	2753
holder may convert blank to special.....	2754
restrictive, defined.....	2755
restrictive, confers what rights.....	2756
qualified, constitutes endorser a mere assignor of title....	2757
conditional effect of.....	2758
effective of special, instrument payable to bearer.....	2759
by two or more payees.....	2760
payable to cashier or other fiscal officer, payable to cor- poration.....	2761
name of payee wrong, how endorsed.....	2762
endorser in representative capacity may negative personal liability.....	2763
undated, presumed, before due.....	2764
presumed made at place of date of instrument.....	2765
once negotiable, continues so till discharged.....	2766
holder may strike out; effect of.....	2767
transfer without, makes non-negotiable till endorsed.....	2768
negotiation back to prior party releases intermediate party	2769
Rights of holder.	
may sue in his own name.....	2770
what constitutes holder in due course.....	2771
delay in presenting when on demand.....	2772
effect of notice of infirmity.....	2773
fraud, duress of force in obtaining, makes title void.....	2774

(See also Index to Forms.)

(References are to sections.)

Negotiable instruments (continued).	Section
Rights of holder (continued).	
actual knowledge necessary to constitute notice of infirmity	2775
free from defect, in title of prior parties.....	2776
holds as non-negotiable, when.....	2777
deemed prima facie in due course.....	2778
Liability of parties.	
maker's admission and engagements.....	2779
drawer's admission and engagements.....	2780
acceptor's engagements	2781
who deemed endorser.....	2782
signing in blank, liable as endorser.....	2783
delivery or qualified endorsement warrants what.....	2784
endorser without qualification warrants what.....	2785
endorser of instrument negotiable by delivery.....	2786
in order of their endorsement.....	2787
broker or agent negotiating without endorsement.....	2788
Presentment for payment.	
when necessary; when not.....	2789
at what time.....	2790
how made	2791
proper place for.....	2792
instrument exhibited to party, delivery when paid.....	2793
payable at bank, how made.....	2794
when made to personal representative.....	2795
how made to partners.....	2796
to persons severally liable.....	2797
when not required to charge drawer.....	2798
not required to charge endorser, when.....	2799
delay in making, when excused.....	2800
dispensed with, when.....	2801
what constitutes.....	2802
dishonor gives right of action against those secondarily liable	2803
when negotiable instruments payable.....	2804
days of grace, what allowed.....	2805
time, how computed	2806
instrument payable at bank is an order to bank to pay....	2807
payment in due course, what is.....	2808
Notice of dishonor.	
effect of failure to give.....	2809
by whom given.....	2810
may be given by agent.....	2811
who benefited by holder's notice.....	2812
given by a party inures to benefit of holder and subsequent parties	2813
agent may give to principal or parties.....	2814
defects of, not to invalidate unless party misled.....	2815
terms of, may be oral or written.....	2816
may be given to party or agent.....	2817
when given to personal representative.....	2818
to partner for firm.....	2819
joint parties, each notified.....	2820
to trustee in bankruptcy, etc.....	2821
at what time given.....	2822
when given to persons residing in same place.....	2823
when given by mail.....	2824

(See also Index to Forms.)

(References are to sections.)

Negotiable instruments (continued).	Section
Notice of dishonor (continued).	
duly mailed, deemed given.....	2825
when deemed mailed.....	2826
when given to antecedent parties.....	2827
where to be sent	2828
may be waived.....	2829
waiver embodied in instrument binds all parties.....	2830
unnecessary when protest waived.....	2831
dispensed with, when.....	2832
delay in giving, excused, when.....	2833
not required, when.....	2834
to endorser, not required, when.....	2835
notice of non-acceptance makes unnecessary.....	2836
effect of failure to give notice of non-acceptance.....	2837
protest not required except of foreign bills of exchange..	2838
Discharge of.	
what constitutes.. ..	2839
when one secondarily liable discharged.....	2840
payment by party secondarily liable is not.....	2841
holder may renounce in writing his rights against any party	2842
cancellation by mistake inoperative.....	2843
material alteration without assent avoids.....	2844
material alteration defined.....	2845
Bills, form and interpretation.	
bills defined	2846
not assignment of fund	2847
may be addressed to two or more drawees jointly but not in alternative.....	2848
inland bill defined	2849
when holder may treat as bill or note.....	2851
referee in case of need.....	2851
Acceptance.	
defined	2852
must be written on bill.....	2853
effect of, on paper other than bill.....	2854
unconditional promise in writing to accept valid, when...	2855
twenty-four hours allowed drawee to accept.....	2856
destruction of, or failure to return, bill deemed acceptance	2857
may be accepted before signed, when overdue, etc.....	2853
general and qualified.....	2859
what is general	2860
what is qualified.....	2861
holder may refuse qualified acceptance and treat bill as dishonored	2862
Presentment for acceptance.	
necessary, in what cases.....	2863
failure to present in reasonable time discharges drawee and endorsers	2864
how made	2865
on what day presented.....	2866
excused, when; can not be made before due.....	2867
excused and bill treated as dishonored.....	2868
when bill dishonored by non-acceptance.....	2869
when bill must be treated as dishonored.....	2870
bill dishonored by non-acceptance, holder has recourse on drawer and endorsers.....	2871

(See also Index to Forms.)

(References are to sections.)

Negotiable instruments (continued).	Section
Protest.	
necessary only on foreign bills.....	2872
annexed to bill, specifies what.....	2873
by whom made.....	2874
must be made on day of dishonor.....	2875
at what place made.....	2876
for non-payment, after for non-acceptance.....	2877
before maturity, in bankruptcy, etc.....	2878
dispensed with, when.....	2879
on a copy of lost bill.....	2880
Acceptance for honor.	
when may be made.....	2881
how made.....	2882
deemed for honor of drawer.....	2883
liability on.....	2884
liable, when.....	2885
maturity, how calculated.....	2886
protest before presentment to acceptor.....	2887
how presented for payment.....	2888
delay in presenting to acceptor for honor or referee in case of need excused, when.....	2889
protest when not paid by acceptor.....	2890
Payment for honor.	
after protest.....	2891
must be attested by notarial act of honor.....	2892
notarial act of honor, on what founded.....	2893
who given preference in.....	2894
discharges all subsequent parties.....	2895
refusing payment forfeits rights.....	2896
payer for honor entitled to bill and protest.....	2897
Bills in a set.	
constitute one bill.....	2898
two or more parts negotiated, holder whose title first ac- crued owner.....	2899
endorser liable for all he endorses.....	2900
acceptor liable for all he accepts.....	2901
payment of part does not release from outstanding accept- ed part.....	2902
payment of one part discharges whole, when.....	2903
negotiable promissory note defined.....	2904
check defined, law governing.....	2905
failure to present in reasonable time discharges drawer..	2906
certification of check in acceptance.....	2907
certification discharges drawer and endorsers.....	2908
check not assignment of funds.....	2909
General provisions.	
terms defined.....	2910
rules of construction.....	2911
who primarily and secondarily liable.....	2912
reasonable time determined by usage.....	2913
law merchant applicable.....	2914
this chapter not retroactive.....	2915
this chapter not to authorize certain things.....	2916
New Trial may be granted defendants.....	215
not allowed in justice's court.....	80, 69
Next Friend, appointment of.....	895
responsible for costs, when.....	1953

(See also Index to Forms.)

(References are to sections.)

	Section
Nol pros. after two years.....	216
Non-suit , new action in one year after.....	859
not allowed after verdict.....	2108
motion for (Hinsdale act).....	1026
Notaries.	
appointed by governor; qualified.....	2917
commission; record of qualification by clerk.....	2918
clerks notaries ex-officio; may certify own seals.....	2919
may take probates, administer oaths, etc.....	2920
may exercise power in other than own county.....	2921
must state expiration of commission.....	2922
seal.....	2923
cannot act when interested.....	2924
Notice , destruction of legal.....	664, 665
mutilating or defacing.....	664, 665
of a motion.....	1314
to be in writing.....	1315
how served.....	1316 to 1320
time of publication of, how computed.....	1324, 1325
served by constable.....	1684
return on, evidence of service.....	1323
of mortgage sale.....	1792, 1098
of appeal from justice's judgment.....	83
of appeal from justice's judgment, return to.....	84, 85
of lis pendens.....	950 to 954
orders made without, vacated.....	1002
Nuisance , how remediable.....	1283
Oaths.	
oaths administered with solemnity.....	2925
how administered.....	2926
who may be sworn with uplifted hand; form of affirmation.....	2927
how Quakers, Moravians, etc., affirm.....	2928
oath to support constitution of United States; form of; all officers to take.....	2929
oath or affirmation to support constitution; form of; taken by all officers.....	2930
when deputies may administer.....	2931
oaths of sundry persons, forms of.....	2932
administrator.....	2932 (1)
attorney at law.....	2932 (2)
attorney general, state solicitors and county attorneys.....	2932 (3)
auditor.....	2932 (4)
book debt oath.....	2932 (5)
book debt oath for administrator.....	2932 (6)
clerk of the supreme court.....	2932 (7)
clerk of the superior court.....	2932 (8)
commissioners dividing and allotting real estate.....	2932 (10)
commissioners of wrecks.....	2932 (11)
constable.....	2932 (12)
cotton weigher for public.....	2932 (13)
entry-taker.....	2932 (14)
executor.....	2932 (15)
finance committee.....	2932 (16)
grand jury—foreman of.....	2932 (17)
grand jurors.....	2932 (18)
grand jury—officer of.....	2932 (19)

(See also Index to Forms.)

(References are to sections.)

Oaths (continued).	Section
jury—officer of.....	2932 (20)
jury, in capital case.....	2932 (21)
jury, in criminal actions not capital.....	2932 (22)
jury, in civil action.....	2932 (23)
jury, laying off dower.....	2932 (24)
jury, laying off roads and assessing damages.....	2932 (25)
judge of the supreme court.....	2932 (26)
judge of the superior court.....	2932 (27)
justices of the peace.....	2932 (28)
register of deeds.....	2932 (29)
secretary of state.....	2932 (30)
sheriff.....	2932 (31)
standard keeper.....	2932 (32)
state treasurer.....	2932 (33)
stray values.....	2932 (34)
surveyor for the county.....	2932 (35)
treasurer for a county.....	2932 (36)
witness to depose before the grand jury.....	2932 (37)
witness in a capital trial.....	2932 (38)
witness in a criminal action.....	2932 (39)
witness in civil action.....	2932 (40)
witness to prove a will.....	2932 (41)
general oath.....	2932 (42)
county surveyors may administer oaths when.....	2933
administered by certain officers.....	2934
certain oaths validated.....	2935
Obscene Books, sale of.....	686
Offer of Judgment in magistrate's court.....	62
in superior court.....	1290 to 1294
Offer of Compromise.....	1290 to 1294
Offices, buying and selling.....	526
no person shall hold more than one office.....	2936
penalty for holding office contrary to constitution.....	2937
bargains made for office void.....	2938
must take oath before acting; penalty for failure.....	2939
persons holding, deemed doing so lawfully; hold until their successors are qualified.....	2940
Officers of the State to make reports.....	550
failing to perform their duties.....	531
resistance to.....	655
bribing.....	523, 524
accepting bribes.....	523
failing to make return.....	559
making false return.....	559
failing to return execution, etc., judgment.....	3139
allowed pay for keeping horses, etc.....	1094
failing to settle after notice; penalty.....	2070
failing to account.....	2061
suit against for failure to account.....	2085
crimes by.....	520 to 565
Order, definition, etc.....	1310
made without notice, vacated.....	1002
Order of Business at court.....	1021
Ordinance of Town, how proved.....	2158, 3192

(See also Index to Forms.)

(References are to sections.)

	Section
Orphans. See "Apprentices" and "Guardian and Ward."	
Outlaw, declaration of fleeing felon to be.....	122
Overseer. See "Roads."	
of a road, neglecting his duty.....	753
Oysters and Fish.....	2941
Papers. See "Writings," "Subpoena duces tecum."	
lost or withheld, copy used....	993, 1616 to 1634, also 2166, 2170 to 2182
subpoena for	2204
order to produce.....	2220
Particulars, Bill of, when to be furnished.....	184, 60, 984
Parties to Civil Actions, action to be by party in interest.....	890
defined	844
appear how	845
who may sue for penalties.....	891, 892
action by purchaser at judicial sale.....	893
how classed	901
numerous, suit by one for class.....	901
new parties by order of court.....	904
action by and against a married woman.....	898
action by executor, trustee, etc.....	894
infants to sue by guardian or next friend.....	895
infants to defend by guardian ad litem.....	896
guardian ad litem to file answer.....	897
insane persons presumed to have made all pleas.....	850
who to be plaintiffs.....	899
who to be defendants.....	900
parties to bills and notes, etc.....	902
joint contracts of copartners.....	903
actions, when not to abate.....	905
death of a party.....	906, 907, 908
death of administrator who is a party.....	1480
interpleader, etc., may be allowed.....	904
examination of	1298 to 1306
testifying as to transactions with deceased persons.....	2194
Partition.	
Procedure.	
as in special proceedings.....	2942
venue	2943
petition filed; commissioners appointed.....	2944
separate partition of surface and mineral interest.....	2945
of homestead, at instance of judgment creditor.....	2946
unknown persons interested, representative appointed....	2947
how commissioners summoned; their duty.....	2948
oath of commissioners.....	2949
commissioners may employ surveyor.....	2950
report; contents; impeached, when.....	2951
confirmation; effect; where registered.....	2952
owelty bears interest.....	2953
owelty charged against minors, when payable.....	2954
delay by commissioner.....	2955
Lands in two states.	
procedure	2956
when court may decree partition.....	2957
commissioners appointed, when; their duty; final decree; deed compelled; effect of decree.....	2958

(See also Index to Forms.)

(References are to sections.)

	Section
Partition (continued).	
Lands in two states (continued).	
when decree of another state enforced.....	2959
decree in another state, how validity passed on.....	2960
Personal property.	
how made	2961
commissioners to report; exceptions; confirmation.....	2962
Sale of land.	
part sold and part divided.....	2963
sale of mineral interest.....	2964
expectancy may be sold.....	2965
life tenant and remainderman may sell; life estate valued	2966
timber trees may be sold; life tenant's estate valued.....	2967
disputed ownership of one share; sale ordered, and own-	
ership reserved	2968
when sale ordered; terms.....	2969
who may sell; confirmation; impeachment.....	2970
how sale advertised.....	2971
confirmation of report in sale for division.....	2972
how proceeds of sale secured to infants, etc.....	2973
land partitioned or sold for dower; dower sold.....	2974
Sale. Public use.	
land required for public use, how sold.....	2975
Sale of personalty.	
when ordered; how made.....	2976
how sale advertised; terms.....	2977
Particulars, bill of, when.....	984
Partners, acknowledgement of debt by one after dissolution.....	861
how sued on joint contracts.....	903
part only served with summons.....	945
undisclosed	862
Partnership.	
Limited partnership.	
for what purposes formed.....	2978
general and special partners joined; liability of special...	2979
must make certificate; what to contain.....	2980
registration of certificate.....	2981
affidavit of payment of cash.....	2982
registration essential.....	2983
false statement, all general partners.....	2984
publication of terms of.....	2985
affidavits of publication filed.....	2986
renewals and continuances.....	2987
alteration in names, etc., a dissolution.....	2988
name of firm	2980
actions as in general partnership.....	2990
special stock not withdrawn.....	2991
depleted capital made good, when.....	2992
rights of special partner.....	2993
accounting inter se.....	2994
effect of insolvency.....	2995
dissolution	2996
Surviving partners.	
inventory by, in sixty days; copy to personal representa-	
tive	2997
on refusal of, personal representative may take inventory;	
receiver appointed, when	2998
notice to creditors.....	2999

(See also Index to Forms.)

(References are to sections.)

Partnership (continued).	Section
Surviving partners (continued).	
debts without lien paid pro rata.....	3000
action on claim not presented in twelve months.....	3001
appraisal for purchase by surviving partner; when he can	
not purchase; approval of clerk.....	3002
accounting in twelve months; time extended; commissions	3003
accounting compelled	3004
Pauper , appeal to supreme court as a.....	221
suit in superior court as a.....	940 to 942, 944
Peace warrants , jurisdiction of.....	105
proceedings on	105 to 113
Peddling without license.....	757
when license for, granted.....	1995 (18)
Penalties , how recovered.....	891, 892
Perjury , sufficiency of indictment for.....	186
form of indictment for.....	187
punishment for	570
subornation of	188
by a voter.....	336
before legislative committee.....	566
before court martial.....	567
to wrong a laborer.....	568
by insolvent debtor.....	569
in assignment	572
Personal claim , notice to defendant of no.....	1947
Pharmacy , practicing without license.....	604 to 609
Physicians , not compellable to testify.....	2184
practicing as without license.....	600 to 602
making fraudulent prescription for liquor.....	481
exempt from jury service.....	2549
Picnic , disturbing.....	659
Pilots , exempt from jury service.....	2549
Place of Trial . See "Venue."	
actions tried where subject-matter situated.....	909
actions tried where cause of action arose.....	910
actions tried where plaintiff or defendant resides.....	914
actions against executors, etc.....	911
actions against foreign corporations.....	913
change of place of trial.....	915
judges authorized to remove trials.....	916, 915
what requisite to authorize removal.....	917
what sent with transcript of removal.....	918
domestic corporation defined.....	912
Plaintiff , defined	844
who to be.....	899
when to plead.....	956
Plea of "not guilty" entered for mute defendant.....	204
insane person presumed to have made every.....	850
Pleadings in magistrate's court.....	48 to 59
may be oral or written.....	49
variance between, and proof.....	57
amendment of in magistrate's court.....	59

(See also Index to Forms.)

(References are to sections.)

Pleadings (continued).	Section
where action is on an account.....	56
complaint in superior court (see "Complaint")	
answer (see "Answer")	
demurrer (see "Demurrer")	
reply (see "Reply")	
forms of.....	58, 977
answer denying debt is for purchase-money.....	970
form of judgment and execution in action for purchase-money	1084
admission that portion of claim just, order to satisfy same	1309
admissions as to trust funds; protection.....	1307, 1308
defendant to file bond in action for real property.....	943
jurisdiction of clerk on.....	847
general rules of.....	977 to 993
lost or withheld, copy may be used.....	993
terms for	2095
to be subscribed and verified.....	978
verification of	979 to 983
items of account, particulars furnished, when.....	984
how construed	985
irrelevant or redundant.....	986
indefinite or uncertain	986
judgments, how pleaded.....	987
conditions precedent, how pleaded.....	988
instrument for payment of money.....	988
private statutes	989
libel and slander, how stated.....	990, 991
joinder of causes of action.....	959
allegation not denied, deemed true, when.....	992
variance, material.....	1003
variance, immaterial	57, 1004
failure of proof, when.....	1005
amendments of course after demurrer	994
amendments by order.....	59, 995
relief in case of mistake or excusable neglect.....	1001
when ignorant of defendant's name.....	998
errors, etc., not substantial to be disregarded.....	997
supplemental pleadings.....	999
in special proceedings.....	1170, 1174
effect of substantial amendments.....	996
time for may be enlarged.....	1000
amendments allowed making pleadings conform to law...	1000
omissions may be supplied	1001
mistake, surprise, excusable neglect.....	1001
Poison, placing, in streams for fish.....	363
placing, for persons.....	586
placing, for cattle.....	261
murdering by	586
Policemen, may serve criminal process.....	3183
Political Meeting, disturbing.....	659
Political Societies, secret, prohibited.....	388
Political Speaking, sale of liquor near.....	482
Post-mortem examinations to be directed by prosecuting attorneys	93
Power of Attorney.....	See "Attorney," 1735, 1540, 1175
from husband and wife.....	1704

(See also Index to Forms.)

(References are to sections.)

	Section
Practicing without a license, dentistry	597, 598
medicine	600 to 602
pharmacy	604 to 609
trade or profession.....	2878 of Revisal
law	596
embalming	599
Preliminary hearing before justice	129 to 146
Presentment	180, 181
Prisoner to be taken before magistrate	120, 131, 102
to be granted bail.....	147 to 153
may remove case.....	46, 47
may have counsel	91, 131, 132
may cross-examine witnesses.....	132
to be cautioned before examined.....	133
evidence of, to be taken down.....	132
may introduce evidence.....	136
not to be examined in presence of witnesses.....	134
examination of, not required in misdemeanor.....	137
when discharged	139
when bound over	142
to be allowed a jury on request.....	199
appeal by	217, 220, 224
to pay costs, when.....	1968 to 1971, 1984, 1985
to be allowed bail.....	147 to 153
allowed bail by whom.....	147 to 150
allowed bail on continuance.....	153
out on bail may be arrested by bondsmen.....	166
surrendered by bondsmen, may substitute other bail.....	166
may give bail to sheriff.....	147
committed to what jail.....	171
arrested without warrant, to have immediate hearing....	120
allowed bail pending appeal.....	222, 223
standing mute, plea not guilty entered.....	204
protected from lynching.....	3146
worked on roads.....	551, 2033 to 2037
See "Insolvent Debtors."	
bailed or released if not promptly tried.....	96
may waive examination.....	129
appeal to superior court.....	217, 218
appeal to supreme court.....	220 to 226
capital execution of.....	227 to 229
female not to be worked on roads.....	551
Private Examination. See "Deeds," "Probates," "Married Woman."	
Private Statute, how pleaded	989
allowing certain land sales, repealed.....	1104
Prize fighting	662
Probates. See "Conveyances."	
Proceedings, Special. See "Special Proceedings."	
Procedure, Civil. See "Actions," "Pleadings," "Parties," "Trial," "Judgment," "Execution," etc.	
Procedure, Criminal. See "Criminal Procedure."	
Process. See "Service" and "Warrant" and "Criminal Procedure."	
issued by justice, where.....	38 to 41
criminal, who may issue.....	97
criminal, to be issued when.....	89, 98

(See also Index to Forms.)

(References are to sections.)

Process (continued).	Section
not quashed for want of form in magistrate's court....	58, 194
criminal, to issue and be returnable at any time.....	89
to be endorsed by sheriff.....	90
making return of....	920, 923 to 926, 2095, 2096, 2105, 3138, 3140
issued by a justice to another county.....	40, 41
judgment, nisi, etc., for failure to return.....	3139
duty of officers to execute	3138
sheriff may return, by mail.....	3140
return on, evidence of service.....	1323
not quashed for want of form.....	194
clerk, sheriff, etc., to endorse date on.....	90
corporations to have officer on whom, may be served....	1920
terms for	2095
not to be executed on Sunday.....	3158
to officer of adjoining county, when.....	2118, 2119
service on insane persons.....	930
Processioning , proceedings to establish disputed line....	1614 and 1615
Profanity , before a magistrate.....	Revisal 1426
Profession , practicing without license.....	Revisal 2878
Prohibition . See "Liquors."	
Promises , to be in writing, when.....	1722 to 1726, 860
Property , malicious injury to real.....	632
malicious injury to personal.....	631
Prosecution bond , in civil suit.....	940 to 942
Protest . See "Negotiable Instruments."	
Publication , service of summons by.....	932
for party to action for foreclosure of mortgage.....	932
in attachment	1222, 1226
time of, computed	1325
Punishment for felonies not specified.....	235
for misdemeanors not specified.....	236
Purchase-money of Land , action for.....	958
mortgage for	1705
judgment and execution.....	1084
Qualification of justices of peace, when.....	6
Quarantine	398
Quashing of process, etc., not allowed in justice's court for want of form	58
when not allowed.....	194
Quieting Title , action to determine conflicting claims.....	2152
Quo warranto	1282
Railroads .	
conductors and other employees to wear badge, when on duty	3005
passenger conductors and depot agents declared special policemen	3006
trains to run on schedule; schedule published; must trans- port freight and passengers.....	3007
how cars arranged on passenger train.....	3008
what trains on Sunday.....	3009
fast mail trains authorized; one train a day in each direc- tion required	3010
may seize and use fuel	3011

(See also Index to Forms.)

(References are to sections.)

Railroads (continued).	Section
regulations as to cleaning cars.....	3012
passenger rate law	3013
separate accommodations for different races.....	3014
corporation commission may exempt certain roads and trains	3015
when two races put in same coach.....	3016
penalty for failing to provide separate cars.....	3017
must check baggage; liable for loss.....	3018
baggage handled carefully.....	3019
ticket to intoxicated man refused.....	3020
may prevent intoxicated person from entering.....	3021
unused tickets to be redeemed.....	3022
injury to passengers on platform, etc.....	3023
refusing to pay fare, may eject.....	3024
freight rate law	3025
freight rates posted	3026
penalty for failure to receive.....	3027
failure to transport in reasonable time; reasonable time defined; forfeiture	3028
paid at classified rates; penalty for overcharge.....	3029
time within which loss or damage must be paid; penalty; amount of recovery; actions united; remedy cumulative	3030
existing remedies continue.....	3031
carrier's right against other carriers.....	3032
unclaimed freight sold.....	3033
unclaimed perishable freight.....	3034
funds from unclaimed freight to go to University.....	3035
through freight and travel.....	3036
charges on partial freight deliveries.....	3037
not to receive more than tariff rate.....	3039
overcharge on tariff rate refunded.....	3039
penalty for failure to refund overcharge.....	3040
live stock killed, negligence presumed.....	3041
injuries by negligence of fellow-servants; defective ma- chinery	3042
how action brought for penalties.....	3043
officials to account to successors.....	3044
vestibule fronts on street railway cars.....	3045
street railways to have fenders in front of passenger cars.	3046
operation of street railways regulated.....	3047
obstructing	717
injuring without malice.....	718, 719
shooting or throwing into cars.....	727
arrangement of trains.....	705
robbing trains	730, 731
rates regulated	733 to 736
pooling rates or giving rebates.....	726
officers of, failing to account to successors.....	724
engineer, conductor or brakeman intoxicated.....	722
Sunday work on	815
injury to	719, 718
failing to construct and maintain cattle-guards.....	715
entering cars after being forbidden.....	713
intoxicated persons entering cars.....	720
riding on, without paying fare.....	707
refusing to ride in second-class car.....	725
building, without authority	732
tickets, dealing in	729

(See also Index to Forms.)

(References are to sections.)

Railroads (continued).	Section
not barred by statute of limitations.....	878
actions against, when barred.....	884
subpoena duces tecum by justice for agent, etc., of.....	45
public drinking on	721
hours of service on, regulated.....	716
removal of packing	723
to keep bridges over roads.....	743
to keep draws in bridges	3100
certain employees exempt from jury service.....	2549
passenger conductors and depot agents have power to arrest	121
Rangers. See "Strays."	
Rape , punishment for.....	592
on child	592
assault with intent to commit.....	593
by impersonating husband	579
complete on penetration.....	594
cases being tried bystanders may be excluded.....	138, 208
Real Estate , title to, in controversy.....	31, 32
Rebellion and Insurrection	386, 387
Receivers	1275 to 1278
Receiving Stolen Goods	459
Recognizances. See "Undertaking" and "Bail."	
remission of	160
Records, Public , larceny of.....	460
obliteration of	460
burnt or lost. See "burnt and lost records."	
Referees , trials by.....	1006 to 1013
all issues referable by consent, except for divorce.....	1006
when compulsory reference.....	1007
report of	1012, 1013
how chosen	1008
powers of	1009
qualifications of	1008
may administer oaths.....	1009
conduct of trial	1010
amendments allowed by	1010
may punish for contempt	1010
testimony before, reduced to writing.....	1011
judgment on report of.....	1012, 1013
Register of Deeds.	
Office of.	
seal of office	3048
election for	3049
vacancy filled by commissioners	3050
oath of office.....	3051
where kept	3052
when open	3053
Duties of.	
Call on clerk for instruments.....	3054
proceed against clerk for failure to deliver papers.....	3055
certify and register copies.....	3056
to register instruments within what time.....	3057
bond liable for failure to register.....	3058
to file papers alphabetically.....	3059

(See also Index to Forms.)

(References are to sections.)

Register of deeds (continued).	Section
Duties of (continued).	
transcribe and index books on order.....	3060
number of survey grants registered.....	3061
certificate of survey to be registered.....	3062
keep general index	3063
index instruments	3064
clerk to board of commissioners.....	3065
serve certain notices by mail.....	3066
make out tax lists.....	3067
omitted duties, how performed.....	3068
Registration. See "Conveyances."	
errors in, corrected how.....	1756
Re-hearing, application to magistrate for.....	69
Relief, affirmative granted defendant.....	1040, 1043
not to exceed prayer.....	1052
Religious Congregation, disturbing a.....	661
disorder in presence of a.....	661
stud-horses, jacks, etc., not to be brought near.....	660
no liquor, etc., to be sold near.....	485
penalty for stopping way to place of worship, springs, etc.	752
intoxication or disorder during worship.....	661
Religious Societies, may appoint trustees.....	3069
may remove trustees.....	3070
title to lands vest in trustees or in societies.....	3071
how to convey land.....	3072
house on vacant land vests title.....	3073
Remedies, defined....	835
not merged	842
Removal of action from a justice	46, 47
from one county to another.....	915 to 918
from disqualified clerk.....	1650
Removal of Justice to forfeit office.....	7
Reply of plaintiff to defendant's answer.....	974
when to be filed.....	974
what to contain.....	975
when no, motion for judgment on answer.....	1045
demurrer to....	976
Resignation of justices.....	8
Resisting an officer.....	655
Restitution in cases of larceny and robbery.....	94
of money collected on judgment afterwards reversed.....	86
Restoration to Citizenship, petition for.....	3074
when and where petition for filed.....	3075
notice given	3076
hearing and evidence.....	3077
decree	3078
pardon, or suspension of judgment; procedure after.....	3079
Return, failure of officer to make.....	559
making false	559
in attachment	1224
in claim and delivery.....	1258
in arrest and bail.....	1188, 1189

(See also Index to Forms.)

(References are to sections.)

Return (continued).	Section
of execution, failure to make.....	3139
on notice, evidence of service.....	936, 1323
of summons. (See "Summons.")	
of justice to notice of appeal.....	84, 85
Reward , governor may offer for fugitive.....	127
Roads, Bridges, Ferries.	
Described.	
what constitutes; board of supervisors.....	3080
width	3081
Established.	
by whom; jurors; appeal.....	3082
petition; notice given	3083
how laid out.....	3084
cartways, tramways, established.....	3085
church roads, established.....	3086
petition for church road; procedure.....	3087
manner of laying out.....	3088
appeal; bond; trial de novo.....	3089
public ferry sites condemned.....	3090
Changed or discontinued.	
on petition	3091
by land owner	3092
cartways, tramways, railways, gates.....	3093
Bridges.	
where footways and hollow bridges maintained.....	3094
how made and maintained; when connecting two counties;	
liability of county commissioners.....	3095
persons constructing ditch across public road to maintain	3096
when owner of, to put in draw.....	3098
railroads keep up, when.....	3099
railroads keep up draws, when.....	3100
county orders for, valid.....	3101
penalty for neglect to repair.....	3102
how expense of maintaining borne.....	3103
solicitor to prosecute for injury to bridges.....	3104
Toll Bridges.	
when commissioners may establish.....	3105
commissioners may regulate tolls.....	3106
owner of ferry may build.....	3107
owner of, and ferries to give bond.....	3108
penalty on unauthorized ferry.....	3109
Gates across.	
permission for erection.....	3110
Supervisors.	
to meet, when and where.....	3111
to make annual reports to superior court	3112
to have orders appointing overseers served within thirty	
days; penalties ....|.....	3113
Overseers.	
when appointed; when hands allotted.....	3114
reports to supervisors.....	3115
to report money collected and how expended.....	3116
may lay off tasks to hands.....	3117
may use timber and dirt on roads.....	3118
notice to work on roads, how served.....	3119
when roads to be worked.....	3120
sign-posts put up.....	3121

(See also Index to Forms.)

(References are to sections.)

Roads, Bridges, Ferries (continued).	Section
Overseers (continued).	
mile-posts put up correctly.....	3122
penalty for neglecting duty.....	3123
Who to work.	
who liable	3124
exemption of students.....	3125
who exempt; how exemption obtained.....	3126
General provisions.	
traction engines allowed on roads.....	3127
owners of land or timber used on road, remedy for.....	3128
Roads. See "Ferries" and "Bridges."	
overseer neglecting his duty.....	753
injury to certain, a misdemeanor.....	717
making certain without authority.....	732
unlawful to work female convicts on.....	551
certain, not barred by statute of limitations.....	878
no title to, by occupancy.....	879
convicts worked on.....	2033 to 2037
female convicts not worked on.....	551
Robbery , restitution in cases of.....	94
of railroad trains	730, 731
Sale	
of deadly weapons to minors	803
of butter, regulated.....	798
of adulterated food.....	393
of adulterated liquors.....	465, 466
of cotton, regulated.....	780
of cotton seed meal.....	783
of dynamite, regulated	786
of concentrated commercial feeding stuffs.....	776, 777
of false judgments.....	371
of cigarettes to minors.....	773, 774
of obscene books	686
of liquors, etc., near religious congregation.....	485
of intoxicating liquors on Sunday.....	487
of liquors without license.....	483
of liquors to minors.....	478
of liquors near political speaking.....	482
of liquors on election days.....	335
of liquors to inmates of public institutions.....	470
of poison without label.....	610
to butchers, record of.....	772
of cocaine, opium, morphine.....	775
of corn	778
of corn meal	779
of cotton in seed.....	781
of cotton at night.....	782
of peanuts.....	781
of fertilizers	787 to 791
of futures.....	792 to 795
of metals	796
of oleomargarine	798
of poisons	610, 799
of tobacco	801
of property stored in public warehouses.....	802
of school books.....	804 to 806
of liquors through agents.....	489
of wine	490

(See also Index to Forms.)

(References are to sections.)

Sale (continued).	Section
of misbranded food.....	393
of misbranded gold and silver articles.....	384
of diseased meat.....	391
of liquors to inmates of charitable and penal institutions.....	470
of narcotics.....	394
days for, under execution and orders.....	1100
judicial, may be postponed.....	1102
judicial, how advertised.....	1098
judicial, notice of, to be served on parties.....	1099
under private statutes.....	1104
judicial, time of commencing.....	1101
judicial, of personal property, how advertised.....	1105
judicial made contrary to law.....	1106
not made for want of bidders, report.....	1107
judicial, judgment for proceeds of.....	2112
judicial, purchaser protected.....	2113
conditional, registered.....	1731, 1732
mortgage; description in notice.....	1793
mortgage; notice of.....	1792, 1098
mortgage; by agent of mortgagee.....	1785
under execution; variance from judgment.....	1085
by executor, etc., of personal property.....	1386 to 1392
by executor, etc., of real property.....	1393 to 1411
of property in which no contingent remainderman is in esse.....	2153, 2154
power of, in mortgages, etc., barred when.....	1794
by executor or administrator of deceased mortgagee or trustee.....	1781
Scales. See "Weights and Measures."	
Scalpers, of railroad tickets punished.....	729
School, disturbing an entertainment of.....	659
injuring property of.....	809
acts of lewd women in presence of students.....	297
funds to be reported by treasurer.....	810
funds, misappropriation of.....	808, 810
School Committee, false returns by.....	807
Scrip, not to be made non-transferable.....	685
payable in money at option of holder.....	685
not to be issued or used to circulate for money.....	666
Seamen, enticing away.....	510 to 513
Search Warrant, proceedings.....	103, 104
in cases of seamen enticed away.....	512
Secret Political Societies, prohibited.....	388
Section 590 of the Code.....	2194
Seduction under promise of marriage.....	298
arrest allowed in action for.....	1183
Separate Trials between plaintiff and several defendants.....	1022
Separation of Witnesses.....	134
Servant, enticing away.....	310
Service. See "Process."	
of notices.....	1315 to 1320
of subpoenas.....	1321 to 1323
of summons. (See "Summons.")	
of process.....	1316 to 1323, 929 to 938

(See also Index to Forms.)

(References are to sections.)

Service (continued).	Section
of process on corporations.....	39
evidenced by return.....	1323, 936
of process on insane.....	930
Sheriff. See "County Revenue."	
may take bail.....	148
committed to what jail.....	92
to endorse dates on process.....	90
making no, or false, return.....	559
judgment against, for failing to return process.....	3139
allowing property seized under execution to remain with possessor	1090, 1091
allowed pay for keeping horses, etc.....	1094
duties of as to process.....	3138
may return process by mail.....	3140
failing to account and settle.....	2070, 2085, 2061, 531
interested, etc., process to officer of adjoining county	2118, 2119
deeds of, when out of office, etc.....	1697, 1698
liable for whole debt when not diligent.....	1583
bonds of	1587
bonds to be renewed.....	1597
coroner takes place of.....	1803, 3132
to furnish to clerk list of those paying poll taxes.....	346
giving tax receipts without payment.....	348
Office of.	
election for	3129
ineligibility for	3130
resignation of	3131
vacancy in, how filled; guilty of a misdemeanor.....	3132
Bond.	
county commissioners to take.....	3133
justification of, required when bond insufficient.....	3134
commissioners liable for loss, when.....	3135
liability of sureties on.....	3136
Duties of.	
to receipt for process.....	3137
execute process; false return, penalty for.....	3138
notice of judgment nisi, how given.....	3139
summonses, orders and judgments, how executed.....	3140
outgoing sheriffs not executing process, penalty.....	3141
pay money to plaintiff, or into clerk's office.....	3142
solicitor to prosecute officer for escape.....	3143
not to allow escape.....	3144
have custody of jail.....	3145
prevent jail breaking for lynching.....	3146
publish list of delinquent tax-payers.....	3147
furnish list of liquor dealers to grand jury.....	3148
not to farm office.....	3149
obligation taken by sheriff to himself only.....	3150
Signs, mutilation or defacement of.....	664
Slander, of an innocent woman.....	595, 2583
See "Libel."	
Solicitor, drunken, to be discharged.....	2088
Special Proceedings. See "Clerk."	
defined	835, 837
provisions applicable to.....	1166
commenced how	1167

(See also Index to Forms.)

(References are to sections.)

Special Proceedings (continued).	Section
summons in, contents of.....	1168
return of summons.....	1169
complaint, when filed.....	1170
nonsuit in	1171
time for pleading may be enlarged.....	1172
when all parties ask same relief.....	1174
equitable and other defenses may be pleaded.....	1173
clerk may hear summarily, when.....	1175
infant petitioners, judge to review order.....	1176, 1177
how commenced when adversary.....	1167
orders to be signed by judge.....	1178
no report set aside for trivial defects.....	1180
time of performance to be prescribed in orders.....	1179
returns of commissioners of sales.....	1179
no report set aside for trivial defect.....	1180
commissioners to settle in sixty days.....	1181
pleadings in.....	1170, 1173, 1174
appearance in, how made.....	1175
issues of fact before clerk; transfer.....	1173
Spring , contamination of a.....	834
State may appeal when, in criminal cases.....	219
State Treasurer , fraudulent entries or statements by.....	561
Statute of Limitations. See "Limitation of Actions."	
Stay of Execution	74 to 79, 81
Statutes, Construction of	
repeal of statute not to affect actions.....	3151
rules for construction of statutes.....	3152
singular and plural number, masculine gender, etc.....	(1)
authority of public officers, etc., exercised by majorities, unless, etc.....	(2)
"month" and "year".....	(3)
leap year, how counted.....	(4)
"oath" and "sworn".....	(5)
"person" and "property".....	(6)
"preceding" and "following".....	(7)
"seal"	(8)
"will"	(9)
"written" and "in writing".....	(10)
"state" and "United States".....	(11)
"imprisonment for one month," how construed.....	(12)
where amended, how construed.....	3153
Stevedores must have license.....	759, 2618
lien of	2609
Stock. See "Cattle," "Cruelty to Animals," and "Corporations."	
Stock Law. See "Fences."	
Strays , owner notified; if unknown, register of deeds notified.....	3154
owner may reclaim.....	3155
when and how strays sold.....	3156
Streams , obstruction of.....	514 to 516
dammed to have gates.....	329
saw-dust in	328
poisoning	363
Submission of a controversy without action.....	1295 to 1297

(See also Index to Forms.)

(References are to sections.)

	Section
Subpoena , how served.....	1321 to 1323
by board of county commissioners.....	1995 (22)
general provisions	2202 to 2207
by commissioner, referee, etc.....	2203, 2212
by clerk in unprovided cases.....	2203
by whom issued after case removed.....	2205
duces tecum	45, 2204
by justice	43
by whom issued.....	1321
Summons issued by a magistrate.....	35, 36
service of magistrates'.....	37
superior court, action commenced by.....	919
requisites of	36, 923, 924
returnable when	36, 920, 926
when issued but not served ten days before first term.....	925
to bear seal, when.....	921
may issue to several counties at same time.....	922
execution and return of.....	923, 924
alias and pluries.....	927, 928
undertaking before issuing.....	940 to 942
how served	929
service by delivering copy.....	930
service by publication.....	932 to 934, 939
service by mailing copy.....	938
service on only part of defendants.....	945
service of, on other parties after judgment.....	946 to 949
service of, certain validated.....	931
service of, jurisdiction acquired from.....	935
proof of service.....	936
appearance of defendant equivalent to service of.....	937
in special proceedings.....	1168, 1169
Sunday , operation of railroad trains on.....	815
hunting on	813, 814
fishing on, with seines or nets.....	812
sale of intoxicating liquor on.....	487
process not to be executed on.....	3158
laboring on, prohibited.....	3157
public holidays falling on.....	3159
acts to be done on.....	3160
Superior Court. See "Court."	
Supersedeas	79
Supplemental proceedings , execution returned unsatisfied, order to	
defendant to answer concerning property.....	1124
execution not returned, order upon affidavit.....	1125
either party to examine witnesses.....	1127
defendant arrested when.....	1128
persons not excused from answering.....	1129
transfer of property forbidden.....	1130
debtor of judgment debtor may pay to sheriff.....	1131
order to debtors of judgment debtor.....	1132
witnesses required to testify.....	1133
examination to be certified.....	1133
property not exempt to be applied to judgment.....	1135
receiver appointed	1136
other creditors having like proceedings notified.....	1136
receiver; regulations concerning	1137 to 1139

(See also Index to Forms.)

(References are to sections.)

Supplemental proceedings (continued).	Section
property claimed by third person.....	1139
debt denied	1139
order of reference.....	1140
disobedience to order; punishment.....	1141
proceedings against joint debtors.....	1126
where instituted and held.....	1134
Supreme Court , opinion certified to superior court, subsequent procedure in criminal case.....	226
Surety and principal , suretyship shown, what judgment and execution to contain	3161
property of principal sold before that of surety.....	3162
summary remedy for and against principal.....	3163
surety paying debt of deceased principal, subrogated to creditors' rights	3164
co-surety liable for contribution.....	3165
may dissent from stay of execution; not then liable to surety on stay.....	3166
may notify creditor to collect; penalty for delay.....	3167
negligence of creditor discharges surety, when; proviso..	3168
how notice served.....	3169
Surprise , relief in case of.....	1001
Survey , ordered by court.....	2093
consolidated, of several tracts.....	2094
Surveyors . See "County Surveyor."	
shall test magnetic needle.....	3333
measure of chain of.....	3332
instruments tested in another county.....	3334
tests returned to register of deeds and registered.....	3335
meridian monuments to be protected.....	3336
Swearing , before a magistrate. (See Appendix to this volume.)	
Taxes , collection of.....	3170
embezzlement of	356
Telephone , poles, etc., injuring.....	818
messages, violation of secrecy of.....	819
wires, disconnecting or injuring.....	816
Telegraph poles, etc., injuring.....	818
messages, violation of secrecy of.....	683, 817
certain operators exempt from jury service.....	2549
Tenant . See "Landlord and Tenant."	
Tender of judgment	62, 1290 to 1294
Term of court continued to complete a trial.....	209
Time , computation of.....	1324, 1325
Title to real estate in controversy	31, 32
Titles quieted.....	2152
Tobacco warehouse charges for selling leaf, regulated....	3298 to 3301
sale of, regulated.....	801
Tombstones , removing or defacing.....	635
Torts , jurisdiction of justice.....	29 page 6
Towns and cities , claims against, when barred.....	886
claims against must be presented.....	2062
ordinances of, how proved in superior court.....	2158, 3192
depositions before aldermen.....	2216

(See also Index to Forms.)

(References are to sections.)

Towns and Cities (continued).	Section
Incorporation and powers.	
every town a body politic.....	3171
corporate powers	3172
how corporate powers exercised.....	3173
how far this chapter applicable; meaning of "commissioners"	3147
Commissioners.	
elected bi-ennially by qualified voters.....	3175
oath of office of.....	3176
vacancy, how filled.....	3177
how number of, changed.....	3178
Powers of Commissioners.	
ordinances, rules and regulations made by.....	3179
may levy taxes	3180
may appoint a constable and other officers; fix salary of mayor and others.....	3181
may appoint police	3182
policemen may execute criminal process.....	3183
may establish and regulate markets; street sales free, when	3184
may abate nuisances.....	3185
shall repair streets and bridges.....	3186
Mayor.	
how elected; vacancy	3187
to take oath of office.....	3188
presiding officer at commissioners' meetings; mayor pro tem	3189
criminal jurisdiction of	3190
ordinances and penalties enforced; appeals.....	3191
mayor must certify ordinances on appeal.....	3192
may sentence to work on street to pay fine.....	3193
Constable.	
to take an oath of office.....	3194
power as to process and as peace officer.....	3195
power as tax collector; bond.....	3196
Officers.	
must be voters in town or city.....	3197
penalty for refusing to qualify and act.....	3198
hold over, when	3199
Elections.	
how far this chapter applicable.....	3200
when election held.....	3201
polling places	3202
registrars appointed; public notified; vacancy.....	3203
registrars to take an oath.....	3204
registration of voters.....	3205
notice of new registration.....	3206
registration books revised.....	3207
when registration books opened and closed; who may register	3208
registration on election day.....	3209
vacancies on election day.....	3210
when books open for challenge.....	3211
practice in challenges.....	3212
registration books, where deposited.....	3213
judges of election appointed; oath of.....	3214
judges superintend election; poll books.....	3215

(See also Index to Forms.)

(References are to sections.)

Towns and Cities (continued).	Section
Elections (continued).	
when polls open and close.....	3216
who may vote.....	3217
ballots and ballot boxes.....	3218
ballots counted; result declared; void ballots.....	3219
board of canvassers; original returns.....	3220
when and where board meets; oath.....	3221
board determines result; tie vote.....	3222
notice of special election.....	3223
Taxes.	
must be uniform and ad valorem.....	3224
tax list, by whom; failure to list, pays double tax.....	3225
tax list corrected	3226
dog tax	3227
monthly settlements by tax collector.....	3228
annual statement taxes received and disbursed published..	3229
Municipal debts.	
no debt or tax except for necessities, but by vote of people	3230
how paid	3231
taxation of municipal bonds.....	3232
limited to ten per cent of assessed values.....	3233
Municipal property sold.	
by mayor and commissioners at public sale.....	3234
by county commissioners, when no mayor.....	3235
title made by mayor.....	3236
Regulation of buildings.	
chief of fire department appointed, how; remuneration...	3237
chief of fire department, local inspector of buildings; must make reports; local inspectors appointed.....	3238
electrical inspectors.....	3239
deputy inspector may perform duties.....	3240
fire limits established.....	3241
building permits required; how obtained; inspections...	3242
walls of buildings, how constructed.....	3243
frame buildings not erected in fire limits.....	3244
thickness of walls.....	3245
foundation of walls; openings in walls; how doors pro- tected	3246
metallic stand-pipes on what buildings.....	3247
joists; how entered in walls.....	3248
chimneys and flues.....	3249
chimneys not built on wood.....	3250
flues; how constructed.....	3251
hanging flues	3252
flues cleaned on completion of building.....	3253
no stove pipe to pass through wood; penalty for violation of this section.....	3254
height of chimneys for foundries.....	3255
steam pipes not placed within two inches of wood.....	3256
electric wiring of houses, how done; fees for inspection..	3257
quarterly inspection of buildings.....	3258
annual inspection of buildings.....	3259
records of local inspectors.....	3260
reports of local inspectors.....	3261
fees of inspector.....	3262
ashes, etc., how cared for.....	3263

(See also Index to Forms.)

(References are to sections.)

Towns and cities (continued).	Section
Regulation of buildings (continued).	
ordinances not repealed; ordinances passed to enforce the law	3264
defects in buildings corrected.....	3265
unsafe buildings condemned.....	3266
to what towns applies; how towns exempted; discrimination by insurance companies.....	3267
Trade-marks.	
Generally.	
trade-marks, labels, etc., filed for registry.....	3268
property rights protected by filing for registry.....	3269
filed with secretary of state; affidavit; fees.....	3270
registration; certified copies evidence; fees.....	3271
how transferred	3272
similar trade-marks refused registration.....	3273
penalty for securing fraudulent registration.....	3274
use of counterfeit trade-marks unlawful.....	3275
unauthorized use unlawful; use under license.....	3276
remedies; damages; profits; destruction of counterfeits...	3277
additional penalty	3278
counterfeiting	821
sale of goods bearing counterfeit.....	821
fraudulent use of brands.....	822, 823
for timber, use of.....	825
for timber, altering.....	826
for timber, taking possession of logs bearing.....	827, 824
of bottlers	827a
general provisions.....	3268 to 3284
Timber.	
who may adopt.....	3279
how adopted, registered and published.....	3280
property in; how used.....	3281
branding with, effect of.....	3282
branding with, evidence of ownership.....	3283
Live stock.	
owners of stock to register brand or mark.....	3284
Trains. See "Railroads."	
Tramps and Vagrants.	691 to 694, 697
Treasurer of the State, fraudulent entries or statements by.....	561
Treasurer. See "County Treasurer."	
Trespass. See "Crimes," "Fences," and "Game."	
cutting timber from another's land.....	642
upon lands of another.....	643
upon public lands	698, 702 to 704
by riding or driving stock on another's land.....	263, 264
by hunting	430
Trial,	
by justice, where	24
by justice, when	198
commitment after judgment by justice.....	201
parties entitled to copies of papers of justice.....	202
removal of, from a justice.....	46
associating another justice in.....	95
new, may be granted defendant.....	215
plaintiff in magistrate's court must prove his case although defendant does not appear.....	55

(See also Index to Forms.)

(References are to sections.)

Trial (continued).	Section
where action is on an account.....	56
by jury in justice's court.....	14 to 28, 199, 200
new, in justice's court, not allowed.....	80
place of. See "Place of Trial."	
defined	1014
of issues, how.....	1015 to 1017
of civil issues at term next ensuing joinder.....	1016
issues of fact joined before clerk transferred to term.....	1017
postponement of, before trial term.....	1018
postponement of, at trial term.....	1019
counter-affidavits allowed upon motion to continue.....	1020
by jury	14 to 28
by jury, how waived.....	16, 1027
separate between plaintiff and several defendants.....	1022
general and special verdicts.....	1037 see "Verdict."
exceptions, how taken.....	1029
judge to express no opinion on facts.....	1023
judge to put his instructions in writing.....	1024, 1024a
prayers for instructions to be in writing.....	1025
demurrer to evidence	1026
waiver of trial by jury	1027
by the Court; how judgment given.....	1028
proceedings upon judgment on issue of law.....	1030
by referees	1006 to 1013
nonsuit not allowed after verdict.....	2108
death between verdict and judgment.....	1051
criminal, in superior court.....	204 to 216a
continuance may be granted by justice.....	63
code of civil procedure applicable to justice.....	64 to 66
on judgment.....	68
rehearing before a justice.....	69
See "Preliminary Hearing" and "Criminal Procedure."	
of defendant in criminal case necessitates indictment.....	180
prisoner standing mute.....	204
challenges to jurors.....	205 to 207
of rape cases, by-standers excluded.....	208
expiration of term in midst of.....	209
conviction for assault.....	211
conviction for attempt.....	212
conviction for lesser degree of crime than charged....	213, 214
nol pros. after two terms.....	216
youthful offenders sent to houses of correction.....	216a
de novo in superior court.....	217
argument of counsel.....	1543
of certain actions at appearance term.....	974
when actions stand for.....	974
Trust funds summarily protected.....	1307 to 1309
Trustees, not to be contractors.....	527
costs against	1954
infant, to convey, how	1786
clerk to appoint	1787, 1788
Trusts, the anti-trust law.....	695, 696
Turpentine, adulteration of.....	800
Turpentine Trees	2568
Undertaking, required for stay of execution.....	77, 78
required in arrest and bail.....	1186, 1194

(See also Index to Forms.)

(References are to sections.)

Undertaking (continued).	Section
in attachment	1219, 1229, 1231
in claim and delivery	1249, 1251, 1256
for costs before summons issued	940 to 942
for costs, not required in divorce case	2122
required of defendant in action for real property	943, 944
judgment for plaintiff when defendant does not file	1043
mortgage given in lieu of	1562 to 1568
Usury	828, 2520
Vacancies in office of justices of peace	2, 6
Vacation , relief granted in	1046, 2090
Vagrants	691 to 694, 697, 697a
Validation of certain probates. See "Conveyances."	
Variance , disregarded in magistrate's court, when	57
material	1003
immaterial	1004
between execution and judgment	1085
Venire , special	2542 to 2544
Venu . See "Place of Trial."	
where crime is committed on waters dividing counties	174
improper	179
when assault in one county or State and death in another	175, 176
when crime is committed across the state line	177
lynching	173
death in this state, immaterial where injury inflicted	178
Verdict . See "Jury," "Trial."	
general and special	1037
to assess damages in certain cases	1040
entry of, by the clerk	1041
motion to set aside	1041
death between, and judgment	1051
character of, for different actions	1038
special controls general	1039
Verification , when pleadings to have	978
form of	979 to 983
Vessels , unlawful to anchor, to buoys	501
unlawful to anchor in range line of lights	505
failing to exercise diligence in passing buoys	500
Voter , intimidation of	333
Wagoners , not extinguishing camp fires	290
Waiver , of examination by defendant	129
of indictment only in certain cases	197
of jury trial	16, 1027
Warehousemen .	
Public warehousemen.	
who may become	3285
bond to clerk of court; penal sum	3286
injured person may sue on bond	3287
insurance on stored property; storage receipts	3288
title passes with storage receipt	3289
title when goods are mixed	3290
books of account kept; open for inspection	3291

(See also Index to Forms.)

(References are to sections.)

Warehousemen (continued).	Section
Public warehousemen (continued).	
sale of property for storage charges one year overdue; proceeds; notice of sale.....	3293
notice, how served; return of; publication.....	3293
surplus disposed of.....	3294
when perishable or dangerous property is stored; proceeds of sale paid to clerk, when.....	3295
when unable to sell perishable or worthless property....	3296
storer liable for charges, when.....	3297
Tobacco warehouse charges.	
maximum charges fixed.....	3298
weighers sworn	3299
bill of charges rendered; penalty.....	3300
leaf tobacco warehousemen required to keep and furnish certain statistics	3301
Warrant , to be issued by whom.....	97
to be issued when.....	98
to be issued where.....	99
where to run.....	99
endorsed, when and how.....	100
endorsed improperly, justice not liable.....	101
returned where	102
arrest to be made without, when.....	114
See also "Process" and "Criminal Procedure."	
persons arrested without, to have immediate hearing.....	120
search	103, 104
peace	105 to 113
Warren County , election of magistrates in.....	5
Ward . See "Guardian and Ward."	
Waste	1284 to 1289
Watercourses , obstruction of.....	514 to 516
Water-lines , damaging.....	406, 407
Water-sheds , protection of.....	3302 to 3319
Water Supplies .	
Protection of watersheds.	
inspection of	3302
rivers and large creeks inspected fifteen miles.....	3303
penalty for failing to inspect.....	3304
cities and towns to make inspection.....	3305
residents on watersheds to obey instructions.....	3306
inspectors may enter upon premises.....	3307
sewage not discharged in.....	3308
towns, etc., not having sewerage system.....	3309
no cemetery on watershed.....	3310
to be protected	405 to 407, 829 to 834, 3302 to 3319
Analysis .	
to be made.....	3311
state board of health may have examination made; fee....	3312
state board of health to make examinations.....	3313
state laboratory of hygiene; analyses of water, sputum, blood, etc.; appropriation for; tax against water companies	3314
Miscellaneous provisions .	
precaution against contamination.....	3315
mayors to have concurrent jurisdiction.....	3316
condemnation of lands.....	3317

(See also Index to Forms.)

(References are to sections.)

Water supplies (continued).	Section
For public institutions.	
may enter upon lands to lay pipes, etc.....	3318
compensation for land.....	3319
Watts Law (see "Liquors")	
Weapons, carrying concealed.....	663
sale of deadly, to minors.....	803
Weights and Measures.	
Standards of.	
to be used by traders; exception.....	3320
provided by commissioners; branded.....	3321
what is an acre of land.....	3322
how many pounds to a bushel; penalty.....	3323
penalty for using; untested.....	3324
State-keeper.	
appointed by governor; keeper of capitol, when.....	3325
duties of	3326
must supply counties at their cost.....	3327
record kept by.....	3328
County-keeper.	
appointed by commissioners; tenure; oaths.....	3329
may test every two years; penalty; exception.....	3330
destroys weights and measures, when.....	3331
Surveyors.	
what is a surveyor's chain; tested.....	3332
magnetic instruments and chains tested.....	3333
instruments tested in another county.....	3334
tests returned to register of deeds; registered.....	3335
meridian monuments protected by county commissioners..	3336
Well, contamination of a.....	834
Widows.	
Dissent from will.	
how; when	3337
effect of dissent.....	3338
not liable for husband's debts.....	3339
Dower.	
who entitled to.....	3340
consists of what.....	3341
husband's alienation does not bar, except to secure purchase money.....	3342
conveyed by joining in deed.....	3343
Dower allotted.	
assigned by agreement, when.....	3344
application for	3345
how assigned	3346
notice to parties of meeting of jury.....	3347
pay of minors allotting dower.....	3348
Year's Support.	
who entitled	3349
value	3350
family defined	3351
if no widow, children entitled.....	3352
from what assigned	3353
Year's Support Assigned.	
personal representative shall assign.....	3354
value ascertained	3355
procedure to assign.....	3356

(See also Index to Forms.)

(References are to sections.)

Widows (continued).	Section
Year's support assigned (continued).	
duty of commissioner	3357
appeal	3358
duty of appellant	3359
allowance to widow a credit to personal representative...	3360
Increased Allowance.	
when allowance in full.....	3361
assigned on application to superior court.....	3362
proceeding; parties	3363
complaint	3364
judgment	3365
duty of commissioner; report.....	3366
exception by interested persons.....	3367
confirmation; execution; costs.....	3368
Wife. See "Conveyances," "Husband and Wife," "Marriage," "Married Women," "Evidence."	
Wills.	
Execution.	
age of testators.....	3369
married woman	3370
how executed	3371
execution of appointments by.....	3372
Revocation.	
how written will revoked.....	3373
revoked by marriage; exception.....	3374
not revoked by altered circumstances.....	3375
conveyance after execution does not.....	3376
Witnesses.	
executors competent	3377
devise	3378
witness dead, affidavits evidence, when.....	3379
Probate.	
executor may apply for.....	3380
executor failing, who may apply.....	3381
production of will for, compelled.....	3382
what shown on application.....	3383
proof and examination in writing.....	3384
how admitted to probate	3385
how far probate conclusive.....	3386
wills filed in clerk's office	3387
certified copy of will proved in another state.....	3388
made out of state, how proven	3389
where witnesses reside in different county, how proven..	3390
non-resident's will, recorded; proof.....	3391
probates validated	3392
Caveat.	
when and how filed.....	3393
cause transferred to trial docket, when.....	3394
filing of, suspends proceedings under will.....	3395
Construction.	
devise presumed a fee simple.....	3396
valid only after probate; conclusiveness of probate.....	3397
what property passes by will.....	3398
speak as of death of testator.....	3399
lapsed and void devises pass under residuary clause.....	3400
general gift includes estate to which testator has power to appoint	3401

(See also Index to Forms.)

Wills (continued).	Section
Construction (continued).	
gifts to children dying, pass to issue.....	3402
void as to after-born children.....	3403
administrator c. t. a. must observe will.....	3404
trustees under will required to file inventories and ac-	
counts	3405
larceny of	463
destruction of	463
concealment of	463
copy of, evidence.....	2166
See "Evidence."	
Wine. See "Liquors."	
Wire Fence, unlawful to cut.....	359
Wires, telephone and electric protected.....	816, 818, 820
Witnesses. See "Evidence."	
examination of	131, 132
evidence of, reduced to writing.....	132
prisoner not examined in presence of.....	134
may be separated	134
bound over to court	143
required to give bond, when.....	144
committed on failure to give bond.....	172
their attendance.....	2202 to 2207
persons participating in unlawful gaming compelled to	
testify	2251, 676, 2200
intimidation of	651
attendance secured in magistrate's court.....	43
attending magistrate's court in another county.....	44
husband and wife as.....	2198, 2199
interest not to exclude.....	2191 to 2193
testifying to transactions with deceased persons.....	2194
when party may not testify.....	2196
book accounts	2185 to 2187
copies of accounts as evidence.....	2187
before board county commissioners.....	1995 (22)
for State, when paid by county.....	1966
before grand jury, paid when.....	1979
in criminal action, paid when.....	1973
only two, bound over and paid.....	1981, 1980
discharged by solicitor	1982, 1983
defendant's paid by county, when.....	1967
must be included in order or certificate to be paid.....	1983
to an instrument subpoenaed.....	1744
not incapacitated by interest or crime.....	2191
physicians and surgeons.....	2184
parties as	2193
defendant executors as	2195
defendant in criminal case	2197
need not criminate himself.....	2198
rules for summoning.....	2202
penalty for non-attendance.....	2206
summoned by commissioners, referees, etc.....	2203, 2212
attendance before commissioners, etc., enforced.....	2213
subpoenaed by clerk in unprovided cases.....	2203
exempt from arrest	2207
not entitled to fees in advance.....	1975
to prove attendance at each court.....	1976

(See also Index to Forms.)

Witnesses (continued).	Section
tickets filed with clerk, etc.....	1977
only two, to a material fact.....	1980
to wills; devises and bequests to, void.....	3378
to wills	3377 to 3379
Section 590 of the Code.....	2194
Woods, burning	289, 290
Work-houses. See "Jails" and "Jailers."	
establishment of	2038
directors of	2042, 2043
manager of	2044
compensation of manager.....	2046
taxes levied for.....	2039
escaped inmates retaken.....	2048
vagrants released	2049
sheriff to convey prisoners to.....	2047
employment assigned	2045
government notified of establishment.....	2041
bonds issued for	2040
suits in behalf of, how brought.....	2050
jointly established by two or more counties.....	2051 to 2053
Wrecks, crimes in connection with	517 to 519, 503
Writing, certain contracts to be in	1722 to 1726
Writings. See "Subpoena, duces tecum."	
admission of	2221
inspection of	2219
subpoena for.....	2220, 45, 2204
order to produce	2220
Year's Support. See "Widows."	
Youthful Offenders sent to house of correction	216a

(See also Index to Forms.)

INDEX TO FORMS.

(References are to the numbers of the forms.)	Number
Acceptance, of offer of judgment	49
Account, citation to administrator to render annual	281
commitment for failure to render.....	282
citation to render final	283
administrator's, how stated	284
citation to guardian to render annual.....	309
Acknowledgment, of grantor	224, 225
before justice	222
commissioner to take	229
of sureties on attachment bond.....	100
Administer, renunciation of right to	267
Administrator, (See "Executors and Administrators.")	
notice to become a party	296
complaint against	42
renunciation of right to administer	267
Adoption of Minor, petition for	145
order granting letters	146
letters of	147
Advertisement of administrator for creditors	287
Advertisement against hunting or fishing	305
Advertisement of stray	381
Affidavit, to rehear	31
for continuance	50
in claim and delivery	103
to interplead	110
by plaintiff in attachment	78
by plaintiff to obtain publication in attachment	82
for arrest on debt	67
against one who has removed or disposed of his property.....	68
of woman in bastardy	153
of county commissioner in bastardy.....	151
for removal of case	7
of plaintiff in ejectment	322
for warrant to seize crops	341
of pauper to sue	114
to obtain service of summons by publication.....	115
of printer as to publication	118
to examine judgment debtor or third person.....	131
for inquisition of coroner	207
of sureties on attachment bond.....	100
Agreement, (See "Contract.")	
to sell land	242
co-partnership	360
for sale and purchase of land.....	243, 244
Animals. (See "Cruelty to Animals" and "Cattle.")	
Answer, before justice where title to land is in controversy	25
with several defences	44
demurrer to	46

(See also Index to Statutes.)

(References are to the numbers of the forms.)		Number
Ante-nuptial contract		347
Appeal, notice of		56
return to notice of		57
undertaking on		58
bond on	58, 142	
transcript of record to supreme court in case of	199 to 201	
Application, for attachment		77
for letters of administration		269
for letters testamentary		270
for letters of administration with will annexed		271
for guardian ad litem		289
for guardianship		312
for year's support		394
for jurors to assign year's support		395
Appointment, of road overseer		362
Apprentice, indenture by clerk		143
indenture between, and employer		149
Arbitration, submission to, form of		411
bond for reference and		412
oath of arbitrators		413
notice of hearing before arbitrators		414
subpoena to appear before arbitrators	260, 415	
oath of witness		416
award in		417
Arraignment of Prisoner		188
Arrest and bail, (See "Bail.")		
affidavit for arrest on debt		67
against one who has removed or disposed of his property		68
undertaking on		69
order of		70
undertaking of bail		71
notice of exception to bail		72
notice of justification of bail		73
notice of other bail		74
justification of bail		75
allowance of bail		76
Assignment, by insolvent debtor		250
Attachment, application for		77
affidavit by plaintiff in		78
undertaking of plaintiff in		85
warrant of		86
return endorsed on		87
inventory of property attached		88
order for sale of perishable property		89
defendant's undertaking in		90
notice of levy on property incapable of delivery		91
form of publication by plaintiff in		81
affidavit to obtain service by publication		82
order of publication		83
notice of service by publication		84
summons to third persons in		92
execution against garnishee		93
notice to third persons of judgment nisi		94
order to third person to appear for examination		95
to enforce order		96
undertaking on discharge of		99

(See also Index to Statutes.)

(References are to the numbers of the forms.)

Attachment (continued).	Number
acknowledgment of sureties in.....	100
order vacating	98
execution in	97
judgment in	100
Attorney , power of	246
Attorney at Law , oath of.....	Page 548
Award of Arbitrators	417
Bail , undertaking of	71
exception to	72
notice of justification of	73
notice of other	74
justification	75
allowance of	76
sci. fa. against	261
Bastardy , warrant against woman	151
undertaking of mother	152
affidavit of woman in	153
affidavit of county commissioner	150
warrant against reputed father	154
bond in justice's court for maintenance	155
bond for maintenance in installments	156
recognizance on appeal in	157
commitment of defendant	158
bond for maintenance in Superior Court	159
Bills, Bonds , etc., mortgage note	160
negotiable note	161
note by two or more parties	162
note with sureties	163
bill of exchange	164
drafts	165
protest of notary	166
notice of protest	167
Bill of Indictment . (See "Indictment.")	
Bill of Sale , with warranty	249
Bond , (See chapter on "Official Bonds.")	
appeal	142
of plaintiff in claim and delivery	105
of defendant in claim and delivery	109
of third person claiming property	111
of plaintiff in attachment	85
of defendant in attachment	90
on discharge of attachment	99
on arrest	69
of bail on arrest	71
of mother in bastardy	152
for maintenance in bastardy	155, 156
on appeal in bastardy	157
for maintenance in Superior Court	159
of caveator to a will.....	409
on appeal in ejectment	142
for costs	113
not required in pauper cases	114
officer's forthcoming	129
of objector in homestead allotment	141

(See also Index to Statutes.)

(References are to the numbers of the forms.)

Bond (continued).	Number
to make title to land	234
of clerk of Superior Court	169
of constable	203
of coroner	214
of county treasurer	217
of manager of work-house	219
of administrator	278
refunding, of distributee	299
of guardian	307
of register of deeds	362
of owner of toll-bridge or ferry	374
of sheriff	376
of standard-keeper	387
for reference in arbitration	412
indemnifying	418
for appearance at next term of Superior Court	6
justification of surety on appeal	59
for recordari	63
acknowledgment of sureties on attachment	100
supersedeas	143
mortgage in lieu of bond for costs	171
mortgage by guardian in lieu of bond	172
mortgage in lieu of recognizance	173
of defendant in ejectment	328
lien bond	337, 338
Book-debt Oath	Pages 548, 549
Bridges. (See "Roads, Ferries and Bridges.")	
bond of owner of toll-bridge or ferry	374
Calling out, defendant in capital case	186
a witness	187
Caveat to a will	408
undertaking of caveators	409
citation to interested parties	410
Certificate, of clerk where process sent to another county	40
of appointment of justice of the peace	227
of a pauper	114
of register of deeds to instrument	226
of standard-keeper	388
of clerk to deed proved in another county	228
of incorporation	215
of clerk to justice's certificate	227
from another county probated	228
of justice on return to appeal in ejectment	331
Chattel Mortgage. (See "Mortgage.")	
Citation, to persons entitled to administer	268
to administrator to render annual account	281
to render final account	283
to guardian to render annual account	309
to guardian to renew bond	310
Claim and Delivery, summons in	102
affidavit in	103
fiat to officer	104
plaintiff's bond in	105
defendant's bond in	109

(See also Index to Statutes.)

(References are to the numbers of the forms.)

Claim and delivery (continued).	Number
notice of exception to sureties	106
notice of justification	107
affidavit to interplead	110
bond of interpleader	111
return of officer	108
Clerk of the Superior Court, probate of (See "Probate.")	
certificate of, to deed, etc. (See "Probate.")	
bond of	169
(see chapter on "Official Bonds.")	
commission of, to magistrate.....	3
certificate of, where magistrate's process sent to another county	40
summons for relief before	119
oath of	170
certificate of appointing justice	227
plaintiff's mortgage for costs	171
guardian's mortgage in lieu of bond	172
mortgage in lieu of recognizance	173
opening court	174
calling jury	175, 180, 189
swearing foreman of grand jury, etc.	176
swearing officer of grand jury	179
swearing petit jurors	181
swearing tales jurors	181
summoning witnesses before grand jury	259
receiving bills from grand jury	184
arraignment of prisoner	188
warning prisoner of his rights	190
selection of jury in capital case	191
swearing jury in capital case	192
empaneling jury in capital case	193
swearing witnesses in capital case	194
swearing jury's officer in capital case	195
receiving verdict in capital case.....	196
polling the jury	196
proclamation before judgment pronounced	197
oaths administered to sundry officers.....	198
transcript of record for Supreme Court in a capital case.....	199
transcript of record for Supreme Court in an indictment for misdemeanor	200
transcript of record for Supreme Court in a civil suit.....	201
(see "Deeds" and "Probate" and "Certificate.")	
(see "Executors and Administrators.")	
Codicil. (See "Will.")	
Commission, to take acknowledgment	229
to take deposition	263
of magistrate appointed by clerk	3
Commissioner. (See "Partition.")	
Commissioner's Deed	295
Commissioners to Assign Year's Support	395
Commissioner to take Deposition, commission of	263
subpoena before	266
Commissioner of Wrecks, oath of.....	Page 549
(See also Index to Statutes.)	

(References are to the numbers of the forms.)	Number
Commitment , of defendant in bastardy for want of bond.....	158
of defendant in justice's final jurisdiction	12
on examination	9
of witnesses	11
on peace-warrant	18
for contempt	205
of administrator failing to account	282
for felony	15
of defendant in bastardy	158
Complaint , (See "Warrant.")	
for goods sold	41
against administrator	42
answer to	44
demurrer to	45
and warrant	4
to obtain search warrant	19
to obtain peace warrant	16
for cruelty to animals	20½
for removal of crop	320
for injury to real estate	321
for trespass on lands	21
Confession of Judgment	144
Constable , oath of	202
bond of	203
Contempt , record in case of	204
commitment in	205
Continuance , affidavit for	50
Contract , (See "Agreement.")	
ante-nuptial	347
labor	348
Copartnership Agreement	360
Coroner , (See "Official Bonds.")	
oath of	206
affidavit for inquisition.....	207
summons for jury before	208
oath of jury on inquest	209
summons for witnesses	210
oath of witness on inquest.....	211
record of coroner on inquest	212
recognizance of witnesses	213
bond of	214
Corporations , affidavit for attachment against foreign	80
certificate of incorporation	215
probate of deeds of	230, 231, 232
deed by a.....	229a
Costs , bond for (civil)	113
in forma pauper's cases	114
execution for (civil)	125
plaintiff's mortgage for	171
County Commissioners , oath of	216
County Treasurer , bond of	217
oath of	218
Court , opening the first day; crier to make proclamation, etc.	174
closing; proclamation	183, 185
opening on succeeding days; proclamation	184

(See also Index to Statutes.)

(References are to the numbers of the forms.)	Number
Credit, Letter of	168
Crier, proclamation of, in opening court	174
proclamation of, in closing court	183, 185
proclamation before judge pronounces sentence	197
Crimes, list of, by magistrate	14
Crop, complaint for removal of	320
affidavit to enforce lien on	341
warrant to seize	342
notice of sale of	343
Cruelty to Animals, complaint for	20½
Decree, confirming report in partition	353
confirming sale to make assets	294
Deeds and Conveyances, of sheriff's under execution	130
warranty deed	220
bond to make title	234
mortgage deed, with insurance clause	235, 236
deed of trust with three parties	237
quitclaim deed	240
agreement for sale of land	242
of right-of-way	245, 245 a
to a trustee	239
probate of clerk	221
probate of justice	222
probate by clerk of justice's certificate	223
acknowledgment of grantor	224
acknowledgment before justice	222
certificate of register	226
certificate of clerk to justice's certificate	227
probate of certificate from another county	228
commission to take acknowledgment	229
by a corporation	229 a
of corporation probated	230, 231, 232, 233
trustee's deed for sale of land	238
timber deed with option clause	241
agreement for sale and purchase of land	243, 244
option for purchase of land	245 b
power of attorney	246
mortgage of personal property (long form)	247
mortgage of personal property (short form)	248
bill of sale	249
of commissioner to sell land	295
administrator's or executor's	300
of administrator or executor under will	301
of sheriff for taxes	378
of sheriff under execution	130
assignment by insolvent debtor	250
Defendant, commitment of	12
Demurrer, to complaint	45
to answer	46
judgment upon	47
Deposition, commission to take	263
notice to defendant in	264
deposition	265
subpoena by commissioner	266

(See also Index to Statutes.)

(References are to the numbers of the forms.)	Number
Docket Entries, in ordinary actions before justices	51
in ejectment	324
Dog, warrant for not killing mad-dog	252
notice to owner of sheep-killing	253
warrant against owner of sheep-killing	254
Dower, petition for	389
order for a jury in	390
writ of	391
oath of jury laying off	392
report of jury in allotting	393
Drafts. (See "Bills, Bonds, etc.")	
Ejectment, affidavit of plaintiff	322
summons in	323
execution in	329
officer's return in	325
bond of defendant	328
supersedeas in	330
entry of justice in	324, 326
certificate of justice on return to notice of appeal	331
record when appeal is prayed	327
Endorsement by magistrate of another county	39
Entry of Land, description	251
warrant and survey	251
Entry on Docket	51
Execution, justice's	29
stay of	30
supersedeas of	30, 66
against executor, etc., by justices	43
order to stay	60
against executors, etc	297, 298
against garnishee in attachment	93
in attachment	97
in ejectment	329
to enforce lien	336
against property	123
venditioni exponas	124
for costs—civil	125
for specific personal property	126
against the person	127
notice of sale under	128
sheriff's deed on sale under	130
officer's forthcoming bond	129
order recalling	33
(see "Supplementary Proceedings.")	
(see "Exemptions.")	
Executors and Administrators, renunciation of right to administer	267
citation of clerk to person entitled to administer	268
application for letters of administration	269
for letters testamentary	270
for letters of administration with will annexed	271
letters of administration	272
letters of collection	273, 274
letters of administration with will annexed	271, 275
oath of	276, 277

(See also Index to Statutes.)

(References are to the numbers of the forms.)

Executors and administrators (continued).	Number
bond of administrator	278
inventory of administrator	279
order to administrator to file inventory	280
citation to render annual account	281
commitment for failing to account	282
citation to render final account	283
account of administrator	284
petition to sell evidences of debt	285
order to sell evidences of debt	286
administrator's notice to creditors and debtors of estate	287
application of administrator for jurors to assign year's sup- port	395
petition to sell land for assets	288
application for guardian ad litem	289
order appointing guardian ad litem	290
order to sell real estate for assets	291
notice of sale	292
report of sale	293
decree confirming sale	294
commissioner's deed	295
execution against	43, 297, 298
refunding bond of distributee	299
deed of	300
deed of, under will	301
complaint against	42
notice to, to become a party	296
Exemption, return of sheriff summoning appraisers	133
appraiser's return	134, 137
petition for homestead	135
magistrate's order	136
notice to creditors	138
notice to sheriff when creditor dissatisfied	139
exception of creditor to appraiser's return	140
bond of objector to allotment	141
Felony, mittimus for	15
Fence, notice to owner of, dividing	302
summons of jury	303
report of jury	304
Ferries, bond of owner of ferry or toll-bridge	374
Finance Committee, oath of	Page 550
Fishing. (See "Hunting and Fishing.")	
Garnishee, execution against	93
Garnishment for Delinquent Poll Tax	379
Grand Jury. (See "Jury.")	
Guardian, bond of	307
oath of	308
citation of, to render annual account	310
citation to renew bond	310
lease of	311
application for guardianship	312
ad litem, application for and order appointing	289, 290
mortgage by, in lieu of bond	172
notice to minor to have guardian ad litem appointed	357

(See also Index to Statutes.)

(References are to the numbers of the forms.)

Guardian (continued).	Number
petition and motion for guardian ad litem	289
(see "Next Friend of Infant.")	
(see "Apprentice.")	
Habeas Corpus , petition for writ of	313
writ of	314
Homestead. (See "Exemptions.")	
Hunting and Fishing , advertisement against	305
warrant for unlawful hunting	306
Incorporation , certificate of	215
Indemnifying Bond	418
Indictment , action of grand jury on	182
clerk receiving, from grand jury	184
for perjury	Secs. 186 and 187
for larceny	Secs. 191 and 193
for embezzlement	Sec. 192
for murder	Sec. 185
for manslaughter	Sec. 185
Infant , petition for appointment as next friend of	359
Injury to Real Property , complaint for	321
Inquest , affidavit for	207
summons for jury	208
oath of jury	209
summons for witnesses	210
oath of witnesses	211
record of coroner	212
recognizance of witnesses on	213
Insolvent Debtor's Assignment	250
Interpleader , affidavit of	110
bond of	111
Inventory , of property attached	88
of administrator	279
order to file	280
Judgment , when demand exceeds \$200	24
in answer to title to land	26
for money	27
transcript of	28
removal to another county	34
upon demurrer	47
offer to allow	48
acceptance of offer	49
notice to defendant to revive	120
order reviving	122
for deficiency in year's support	397
confession of	144
transcript of, in Superior Court	120
in attachment	101
to enforce lien	335
Juror , oath of, in magistrate's court	53
summons against defaulting	55
called by clerk	175, 189
grand, oath of	176, 177
petit, oath of	181

(See also Index to Statutes.)

(References are to the numbers of the forms.)

Juror (continued).	Number
tales, oath of	181
selection of in capital case	191
oath of in capital case	192
empaneled in capital case	193
oath of in civil case	53
oath of in criminal case not capital	181
Jury, venire for magistrate's	52
oath of constable in charge of magistrate's	54
clerk calling jurors	175, 180, 189
swearing the grand jury	176, 177
oath of officer of grand jury	179
oath of petit jury	181
oath of tales jurors	181
oath of witness before grand jury	182
summoning witnesses before grand jury	259
action of grand jury on a bill of indictment	182
clerk receiving bills from grand jury	184
selection of in capital case	191
oath of in capital case	192
empaneling grand jury	178
empaneling in capital case	193
oath of officer in charge of, in capital case	195
verdict of, in capital case	196
polled	196
oath of, in civil cases	181
oath of in criminal actions not capital	181
of coroner, summons for	208
of coroner, oath of	209
on fence	303, 304
to lay out public road	370
to allot dower ..	390
Justices of the Peace, resignation	2
commission of, by clerk	1
endorsement by, of another county	39
probate of deed by (see "Probate.")	
list of names and offences to be sent to clerk of court	14
oath of	1
order recalling execution	33
complaint to	4
warrant of	5
(see "Commitment.")	
subpoena (criminal) of	13
subpoena (civil) of	35
mittimus for a felony	15
summons of	23
judgment when demand exceeds \$200	24
(see "Judgment.")	
(see "Execution.")	
judgment of, removed to another county	34
(see "Subpoena.")	
(see "Summons.")	
(see "Deeds and "Probate.")	
Justification, of surety on appeal bond	59
Labor Contract	348

(See also Index to Statutes.)

(References are to the numbers of the forms.)		Number
Land, complaint for trespass on		21
warrant for trespass on		22
title to in question, answer		25
title to in question, judgment		26
agreement for sale of		242
agreement for sale and purchase of	243,	244
entry of		251
(see "Deed.")		
Larceny, warrant for		8
Lease, for mining purposes		315
of a house and lot		316
of a farm		317
surrender of		318
assignment of by lessee		319
of guardian		311
Letters of adoption		147
of administration		272
of collection	273,	274
of administration with will annexed		275
of credit		168
Levy, on property incapable of delivery, notice of		91
Lien, mechanics' and laborers'		332
notice of		332
execution to enforce		336
entry of clerk on notice of lien		333
summons in action to enforce lien		334
judgment to enforce lien		335
lien bond(for advances) and chattel mortgage	337,	340
lien bond, including old debt		338
affidavit to enforce lien on crops		341
warrant to seize crops		342
notice of sale of crops		343
notice to sheriff seizing crop		344
notice of sub-contractor		345
waiver of landlord's		340
short form for agricultural lien		339
Lien Bond and chattel mortgage for advances		337
including old debt		338
List of names and offences		14
Mad-dog, warrant for not killing		252
Magistrate. (See "Justice of the Peace.")		
Magistrate's commission when appointed by the clerk		3
Manager of Workhouse, bond of		219
Marriage Ceremony		346
Minor, petition to adopt		145
(see "Adoption of Minor.")		
(see "Guardian ad litem.")		
Mittimus for felony		15
(see "Commitment.")		
Mortgage of personal property (long form)		247
plaintiff's, for costs		171
of guardian in lieu of bond		172
in lieu of recognizance		173

(See also Index to Statutes.)

(References are to the numbers of the forms.)

Mortgage (continued).	Number
deed of	235, 236
with three parties	237
chattel (short form), see sec. 1790	248
note secured by	160
and lien bond	337, 340
Motion for guardian ad litem. —(See "Guardian.")	
Naturalization, declaration of alien	419
record of	420
of alien minor	421
Next Friend of Infant. (See "Guardian.")	
petition for appointment as	359
Notary Public. (See "Protest" and "Probate.")	
Note, secured by mortgage	160
negotiable	161
by two or more parties	162
with sureties	163
(see "Bills, Bonds," etc.)	
Notice of appeal	56
of appeal, return to	57
of exception to sureties in claim and delivery	106
of justification of sureties in claim and delivery	107
of levy on property incapable of manual delivery	91
of service by publication in attachment	117
to third persons of judgment nisi	94
of exception to bail	72
of justification of bail	73
of other bail	74
of lien	332
of sale of crop	343
to sheriff seizing crop	344
of sub-contractor	345
of service by publication	84
to defendant to revive judgment	121
of sale under execution	128
to creditors of petition for homestead	138
to sheriff when judgment creditor is dissatisfied with allotment	139
of protest of notary	167
to owner of sheep-killing dog	253
to defendant in deposition	264
of administrator to creditors	287
to owner of dividing fence	302
of filing petition for public road	368
by clerk of petition filed for public road	369
of hearing before arbitrators	414
to administrator to become a party	296
to minor to have guardian ad litem appointed	357
Oaths.	
administrator [page 548 (1)]	276
arbitrators	413
attorney at law [p. 548 (2)].	
attorney general [p. 548 (3)].	
auditor [p. 548 (4)].	
book debt oath [p. 548 (5)].	

(See also Index to Statutes.)

(References are to the numbers of the forms.)

Oaths (continued).	Number
book debt oath for administrator [p. 549 (6)].	
clerk of supreme court [p. 549 (7)].	
clerk of superior court [p. 549 (8)]	170
commissioners allotting year's support [p. 549 (9)].	
commissioners in partition of real estate [p. 549 (10)]	352
commissioner of wrecks [p. 549 (11)].	
constable [p. 549 (12)]	202
coroner	206
coroner's jury	209
cotton weigher for public [p. 550 (13)].	
county commissioners	216
entry-taker [p. 550 (14)].	
executor [p. 550 (15)]	277
finance committee [p. 550 (16)].	
grand jury, foreman of [p. 550 (17)]	176
grand jurors [p. 550 (18)]	177
grand jury, officer of [p. 550 (19)]	179
guardian	308
jurors, tales	181
jury, officer of [p. 551 (20)].	
jury, officer of in capital case	195
jury, officer of, in magistrate's court	54
jury in capital case [p. 551 (21)]	192
jury at mixed term	181
jury in criminal actions not capital [p. 551 (22)]	181
jury in civil actions [p. 551 (23)]	181
jury of coroner	209
jury, laying off dower [p. 551 (24)]	392
jury, tales	181
jury, laying off roads and assessing damages [p. 551 (25)]	371
juror in magistrate's court	53
judge of supreme court [p. 551 (26)].	
judge of superior court [p. 551 (27)].	
justice of the peace [p. 552 (28)]	1
register of deeds [p. 552 (29)]	361
secretary of state [p. 552 (30)].	
sheriff [p. 552 (31)]	375
standard-keeper [p. 553 (32)]	386
state treasurer [p. 553 (33)].	
stray valuers [p. 553 (34)]	383
surveyor for county [p. 553 (35)].	
treasurer for county [p. 553 (36)]	218
witness before grand jury [p. 553 (37)]	182
witness in a capital trial [p. 553 (38)]	194
witness in a criminal action [p. 553 (39)].	
witness in civil action [p. 553 (40)].	
witness before coroner	211
witness to prove a will [p. 554 (41)]	402
witness before magistrate	37
witness before arbitrators	416
general oath [p. 554 (42)]	198
Offences, list of	14
Offer of Judgment	48
acceptance of	49
Officer's Forthcoming Bond	129

(See also Index to Statutes.)

(References are to the numbers of the forms.)	Number
Opening Court	174, 184
Option for purchase of land.....	245b
Order to Stay Execution	60
Order of Arrest	70
Order of Publication	83, 116
Order for Sale of Perishable Property	89
Order to Third Person to Appear for Examination	95
attachment to enforce	96
Order Reviving Judgment	122
Order in Supplemental Proceedings	132
Orphan. (See "Guardian.")	
letters of adoption of	147
Overseer of Road, appointment and allotment	363
Partition, petition for, of land	349
order appointing commissioners	350
notice to commissioners	351
oath of commissioners	352
report of commissioners	353
decree confirming report	354
petition to sell land for	355
order to sell	356
notice to minor to have guardian ad litem appointed	357
petition and motion for guardian ad litem	358
petition for appointment as next friend of infant	359
Partnership Agreement	360
Pauper, suit by; certificate, affidavit and order	114
Peace Warrant, complaint to obtain	16
recognizance on	17
commitment on	18
Person, Execution against	127
Personal Property Mortgage	247
Petition, for homestead	135
to sell evidences of debt	285
to adopt minor	145
to sell land for assets	288
for partition of land	349
to sell land for partition	355
for a public road	367
for dower	389
for recordari	61
for writ of habeas corpus	313
and motion for guardian ad litem	358
for appointment as next friend of infant	359
Plaintiff, bond of for costs	113
mortgage for costs	171
suing as pauper	114
Pleading. (See "Complaint," "Answer," "Demurrer.")	
Posted Land, advertisement of	305
Power of Attorney	246

(References are to the numbers of the forms.)	Number
Prisoner, arraignment of	188
warning of his rights	190
Proclamation by crier, in opening court	174
in closing court	183, 185
before judge pronounces sentence	197
Probate, of clerk	221
of justice	222
of deed of corporation	230, 231, 232, 233
of a will where both witnesses are dead	403
of holograph will	404
of nuncupative will	405
of will from another State	407
of instrument by handwriting	233a, 233b
of instrument to which clerk is a party	233
by clerk of justice's certificate	223
acknowledgment of grantor	224, 225
certificate of clerk to justice's certificate	227
probate of certificate from another county	228
Process, endorsement by justice of another county	39
certificate of clerk when sent to another county	40
Protest. (See "Bills, Bonds," etc.)	
Proxy for stockholders' meeting	215a
Publication, affidavit to obtain	82, 115
order of	83, 116
form of in attachment	81
notice of service by	84, 117
affidavit of printer	118
Quit-claim Deed	240
Rangers (See "Strays.")	
Real Estate, title to in question, answer	25
same, judgment	26
complaint for injury to	321
Recognizance, on appeal in bastardy	157
on state warrant	6
of witnesses	10
on peace warrant	17
of witnesses on inquest	213
mortgage in lieu of	173
Record, transcript to Supreme Court in capital case	199
transcript to Supreme Court in misdemeanor case	200
transcript to Supreme Court in civil case	201
Recordari, petition for	61
fiat of judge	62
bond for	63
writ of	64
sheriff's return to writ of	65
writ of supersedeas in	66
Referee, subpoena before	260
Refunding Bond of Distributee	299
Register of Deeds, oath of	361
bond of	362
(see chapter on "Official Bonds.")	
certificate of, registration of deed, etc.	266

(See also Index to Statutes.)

(References are to the numbers of the forms.)	Number
Rehear, affidavit to	31
Rehearing, summons for	32
Release, general form of	422
of claim for personal injury	423
Removal, affidavit for	7
of justice's judgment to another county	34
Removal of Crop, complaint for	320
Renunciation of Right to Administer	267
Report, of sale to make assets	293
of jury on fence	304
of commissioners dividing land	353
of road overseer	365
of supervisors of roads to superior court	366
of officer and jury to lay off road	372
on turning road	373
of jury allotting dower	393
of commissioners in allotting year's support	396
Resignation, of justices	2
Return, endorsed on attachment	87
in ejectment	325
appraiser's, in homestead and personal property exemp- tion	134, 137
of valuers of strays	384
to notice of appeal	57
of magistrate to notice of appeal in ejectment	331
Reviving Judgment, notice to defendant	120
order	122
Right-of-way Deed	245, 245a
Right to Administer, renunciation of	267
Roads, Ferries and Bridges, appointment of overseers and allotment of roads	363
summons to work road	364
report of overseer	365
report of supervisors to superior court	366
petition for a public road	367
notice of filing petition	368
notice by clerk of petition filed	369
order for jury to lay off road	370
oath of jury	371
report of officer and jury	372
on turning a road	373
bond of owner of toll-bridge or ferry	374
Sale, bill of, with warranty	248
under execution, notice of	128
under execution, sheriff's deed	130
of evidence of debt	285, 286
of land for assets	291, 292, 293, 294
of crops under lien	343
for partition (see "Partition").	
Sci. Fa., against defendant and bail	261
against witness	262
Search Warrant	20
Sentence, passing in capital case	197

(See also Index to Statutes.)

(References are to the numbers of the forms.)		Number
Service of Summons by Publication, affidavit to obtain in attachment		82
order for	83,	116
notice of	84,	117
affidavit of printer		118
Sheep-killing Dog	253,	254
Sheriff, oath of		375
deed for land sold for taxes		378
certificate of sale of land for taxes		377
deed of, for land sold under execution		130
garnishment of, for delinquent poll-tax		379
bond of		376
(see chapter on "Official Bonds.")		
Standard-keeper, oath of		386
bond of		387
certificate of		388
Stay of Execution	30,	330
order for		60
Strays, information of a stray		380
summons to freeholders to value		382
oath of valuers of		383
return of valuers of		384
advertisement of		381
order for sale of		385
Sub-contractor, notice of lien		345
Subpoena, magistrate's (civil)		35
duces tecum	36,	256
magistrate's (criminal action)		13
civil action (in superior court)		255
criminal action (in superior court)		257
instanter		258
before grand jury		259
to appear before referee		260
by commissioner to take deposition		266
(see "Summons.")		
for witnesses before jury of inquest		210
(see "Witness.")		
to appear before arbitrators	260,	415
Suit in forma pauperis		114
Summons, by justice		23
against defaulting juror		55
magistrate's in claim and delivery		102
to third person in attachment		92
in ejectment		323
for re-hearing		32
for relief, to term		112
for relief, before clerk		119
for coroner's jury		209
of coroner for witnesses		210
of jury on fence		303
to work road		364
in action to enforce lien		334
to freeholders to value stray		382
to appear before arbitrators		260
endorsed by magistrate in another county		39

(See also Index to Statutes.)

(References are to the numbers of the forms.)

Summons (continued).	Number
affidavit to obtain service of, by publication in attachment ...	82
order for service by publication	83, 116
notice of service of, by publication	84, 117
affidavit of printer as to publication	118
Supersedeas , magistrate's, in execution	30, 66
in ejectment	330
bond	143
Supplemental Proceedings , affidavit to examine debtor or third person	131
order to examine debtor or third person	132
Surety , justification of, on appeal bond	59
Timber Deed , with option clause	241
Title to Real Estate , in question, answer	25
same, form of judgment	26
bond to make	234
Toll-bridge Owner , bond of	374
Transcript , of justice's judgment	28
of judgment of superior court	120
of record for supreme court in capital case	190
of record for supreme court in an indictment for misde- meanor	200
of record for supreme court in a civil suit	201
Treasurer , County, bond of	217
oath of	218
Trespass , complaint for, on lands	21
warrant for	22
Trust , deed of	237
Trustee , deed to a	239
deed of, for sale of land	238
Undertaking . (See "Bond.")	
Venditioni Exponas	124
Venire , form of	52
Verdict , received how, in capital case	196
Warning Prisoner of his Rights	190
Warrant , of attachment	86
against woman in bastardy	151
against reputed father	154
in trespass	22
complaint and	4
complaint to obtain search	19
search	20
for larceny	8
complaint to obtain peace	16
of clerk, to seize crop	342
for not killing mad-dog	252
against owner of sheep-killing dog	254
for unlawful hunting	306
of survey in entry of land	251
general form of	5
(see "Complaint.")	
(see "Summons.")	
recognizance on	6

(See also Index to Statutes.)

(References are to the numbers of the forms.)		Number
Warranty Deed		220
Widow. (See "Year's Support.")		
(see "Dower.")		
Will, form of, general		398
codicil to		399
examination of witness to	400,	401
probate of, upon examination of one witness and proof of handwriting of the other		402
probate of, where both witnesses are dead		403
probate of holograph		404
probate of nuncupative		405
oath of witness to prove	401,	402
order for next of kin to appear		406
probate of from other state		407
caveat		408
Undertaking of Caveators		409
citation to interested parties		410
(see "Administrators and Executors.")		
Witness. (See "Subpoena.")		
calling out of		187
oath of before magistrate		37
oath of before grand jury		182
summoned before grand jury		259
recognizance of		10
commitment of, for default		11
oath of, in capital case [p. 553 (38)]		194
oath of, in criminal action [p. 553 (39)].		
oath of, in civil action [p. 553 (40)]		37
oath of, to prove a will	401,	402
summoned before coroner		210
oath of, on inquest		211
proceedings against defaulting		38
on inquest, recognizance of		213
to will examined		400
subpoenaed before arbitrators	260,	415
oath of, before arbitrators		416
Work-house Manager's Bond		219
Writ of Dower		391
Writ of Habeas Corpus		314
Year's Support, application of widow for		394
application of administrator for jurors to assign		395
report of commissioners in		396
judgment for deficiency		397

